

BEFORE THE COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THE MARYLAND-
WASHINGTON REGIONAL DISTRICT IN
MONTGOMERY COUNTY, MARYLAND
Office of Zoning and Administrative Hearings
100 Maryland Avenue, Room 200
Rockville, Maryland 20850
(240) 777-6660

IN THE MATTER OF:

RALPH J. DUFFIE, INC.

Applicant

David O'Bryan
Phil Perrine
Stephen G. Petersen
Shane Pollin
Kim Shiley
John Stovall

In Support of the Application

Stephen J. Orens, Esquire
Attorney for the Applicant

Martin Klauber, People's Counsel
For Montgomery County

Neither in Opposition Nor in Support

Before: Françoise M. Carrier, Hearing Examiner

HEARING EXAMINER'S SUPPLEMENTAL REPORT AND RECOMMENDATION

Zoning Application No. G-832

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I. SUMMARY

The present application seeks to rezone 37 acres of undeveloped land on the north side of Shawnee Lane in Clarksburg, between Gateway Center Drive and MD Rte. 355, from the R-200 Zone to the PD-11 Zone. The Applicant proposes to construct a residential development of 408 units, with a mix of single-family detached homes, townhouses, two-over-two single-family attached homes and multi-family dwelling units.

The present case has had an unusual evolution. The original Development Plan proposed a typical arrangement of unit types in separate pods, with detached homes in one area, townhouses in another, and so forth. This was met with disapproval from the Planning Board and members of the community. In its deliberations on this case, the Planning Board engaged in an extensive discussion of the purpose clause of the PD Zone, and specifically the meaning of its design elements. The major outcome of this discussion was a conclusion that the development plan as proposed did not satisfy the design elements of the purpose clause, particularly the direction to facilitate and encourage social and community interaction, and to create a distinctive visual character and identity for the development.¹

Following the Planning Board's initial consideration of this case in March, 2006, the Applicant worked with Technical Staff and the local community to revise its Development Plan. The current plan is an outstanding example of a pedestrian-friendly approach that will encourage interaction and foster a sense of community. It employs a grid system of streets, a centrally-located main recreation area, smaller play areas and green spaces interspersed among residential neighborhoods, and a network of sidewalks linking all of the uses. The various types of housing are integrated at the block level, with detached homes next to townhouses next to two-over-two single-family attached dwellings. The multi-family units remain in a single location, but most wings of the building are directly across internal streets from other unit types or a common play area.

¹ See Planning Board transcript of March 23, 2006, of which the Hearing Examiner takes official notice, at 59.

The most remarkable aspect of the present application is a set of Binding Design Principles which, as aptly described by the Applicant's planner, link the Development Plan proposed here with what will ultimately be proposed for site plan approval, if the project goes forward. The Binding Design Principles address myriad aspects of the development, from the interconnectedness of the street system to the length of blocks, on-street parking, streetscapes, the mix of unit types on each block, variety in building design, building height and lot widths, ground-level outdoor space for two-over-two units, and the use of open space. These Binding Design Principles provide the District Council with something that this Hearing Examiner has rarely seen: binding commitments that address not just basic parameters such as building size and setbacks, but the flavor of the community.

The Planning Board and its Technical Staff recommend approval of the application, finding that the proposed development would satisfy the purpose clause of the PD Zone, would implement the applicable master plan and would be compatible with the surrounding area. The Hearing Examiner agrees, finding that the Development Plan proposed in this case satisfies the requirements of the PD Zone exceptionally well.

II. STATEMENT OF THE CASE

Application No. G-832, filed on November 8, 2004 by Applicant Ralph J. Duffie, Inc., requests reclassification from the R-200 Zone (Residential, one-family, half-acre minimum lot size) to the PD-11 Zone (Planned Development, 11 units per acre) of 37 acres of land located on the north side of Shawnee Lane in Clarksburg, between Gateway Center Drive and MD Rte. 355, in the 2d election district. The property is identified as Lots 27 and 28 of the Garnkirk Farms Subdivision.

The application was initially reviewed by Technical Staff of the Maryland-National Capital Park and Planning Commission ("MNCPPC") who, in a report dated March 10, 2006 (the "March Staff Report"), recommended *approval*. See Ex. 36. The Montgomery County Planning Board ("Planning Board") considered the application on March 23, 2006 and recommended *denial* by a vote of 4 to 0. See Ex. 45 at 2. After the Applicant made extensive revisions to the

application, Technical Staff again reviewed the application and, in report dated July 14, 2006 (the "July Staff Report") recommended *approval*.² See Ex. 45. The Montgomery County Planning Board ("Planning Board") considered the revised application on July 27, 2006 and recommended *approval* by a vote of 4 to 0. See Ex. 49. Staff submitted a supplemental memorandum in response to questions from the Hearing Examiner on September 19, 2006. See Ex. 64.

A public hearing was convened by the Hearing Examiner on September 8, 2006, after proper notice, at which evidence and testimony were presented in support of the application. No opposition was expressed during the hearing, nor does the record reflect any current opposition to the application. The record was held open for supplemental submissions by the Applicant and responsive comments by community members, and closed on October 3, 2006.

III. FINDINGS OF FACT

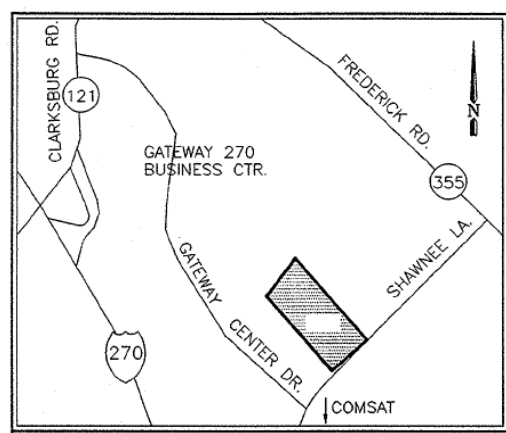
For the convenience of the reader, the findings of fact are grouped by subject matter. Any conflicts in the evidence are resolved under the preponderance of the evidence test.

A. Subject Property

The subject property consists of approximately 37.176 acres of undeveloped, wooded land located within the Clarksburg Special Protection Area. It is located on the north side of Shawnee Lane, approximately 400 feet northeast of its intersection with Gateway Center Drive and 1,700 feet west of MD Rte. 355, in Clarksburg, east of I-270. The property is identified as Lot 27 (19.018 acres) and Lot 28 (18.158 acres) in the Garnkirk Farms Subdivision, and is generally rectangular in shape. There is a small area of stream valley buffer in the northwest corner of the property (0.61 acres), which is associated with a stream that is off the property, about 40 feet to the north. This area would not be affected by the proposed development. The property has a gently rolling topography, rising about 40 feet from Shawnee Lane, on the south, to a high point in the middle of the site. It then slopes back down towards the stream north of the property.

² The July Staff Report is liberally paraphrased and quoted in Part III of this report.

The general shape and location of the subject property are shown on the map that follows, excerpted from Ex. 65(a).



To the west and north, the subject property abuts a series of industrial uses in the I-3 Zone (Technology and Business Park), which straddle Gateway Center Drive and about I-270 to the west. To the south, the subject property confronts portions of three tracts: (1) the “Eastside” property, which was reclassified to the PD-11 Zone by LMA No. G-824 in 2005, and has an approved preliminary plan for a 285-unit development of single-family attached and multi-family dwellings; (2) a parcel owned by the Montgomery County Board of Education and used as a bus depot; and (3) a property in private ownership that is occupied by a moving company. To the northeast, the subject property is diagonally adjacent to the “Gateway Commons” property, on which a 292-unit residential development is under construction, in the R-200/TDR Zone, with a mix of single-family detached and attached homes.

The area immediately east of the proposed right-of-way, between the site and MD 355, is classified under the R-200 Zone and is a wooded area, sparsely developed with single-family detached homes and a church. The portion of this area closest to the subject site is undevelopable stream valley buffer; the stream that runs near the northern corner of the subject site flows through the area east of the site roughly parallel to the property line of the subject site. (The stream’s path is best seen on the map on page 9 below). The development area of the subject property is separated from this sparsely developed area by the future right-of-way proposed for

Observation Drive, which is planned as a four-lane road with a wide median down the middle to accommodate the future Capital Cities Transitway, as proposed in the *1994 Clarksburg Master Plan* (the “Master Plan”). The middle of the proposed right-of-way coincides with the property line of the subject site. The applicant has agreed to provide the necessary dedication and construct the first two lanes of the road, to provide convenient site access. The Master Plan also proposes a transit stop on property immediately across the future Observation Drive from the northeast corner of the subject site. That location would place nearly all of the proposed residential units within one-quarter mile of the transit stop. To facilitate eventual transit, the Applicant has purchased property abutting the northeast corner of the site and agreed to hold it in reservation for a period of five years, to make it available to the County for use in constructing transit-related parking.

B. Surrounding Area

The surrounding area must be identified in a floating zone case so that compatibility can be evaluated properly. The “surrounding area” is defined less rigidly in connection with a floating zone application than in evaluating a Euclidean zone application. In general, the definition of the surrounding area takes into account those areas that would be most directly affected by the proposed development.

In the present case, Technical Staff described the surrounding area as bounded by Clarksburg Road to the north and northwest, I-270 to the west, West Old Baltimore Road to the south and MD 355 to the east and northeast. This area lies within the 900-acre “Transit Corridor District Study Area” identified in the Master Plan. The Applicant’s land planner agreed with this surrounding area designation, as does the Hearing Examiner.

The surrounding area contains a mix of existing uses including businesses in the I-3 Zone, in long, two-story buildings along Gateway Center Drive, between the subject site and I-270; the Comsat property, a commercial compound in the I-3 Zone southwest of the subject site; a Board of Education bus depot on a 20-acre parcel in the R-200 Zone, confronting part of the subject site to the south; a moving company in the I-3 Zone, diagonally confronting the subject property to the

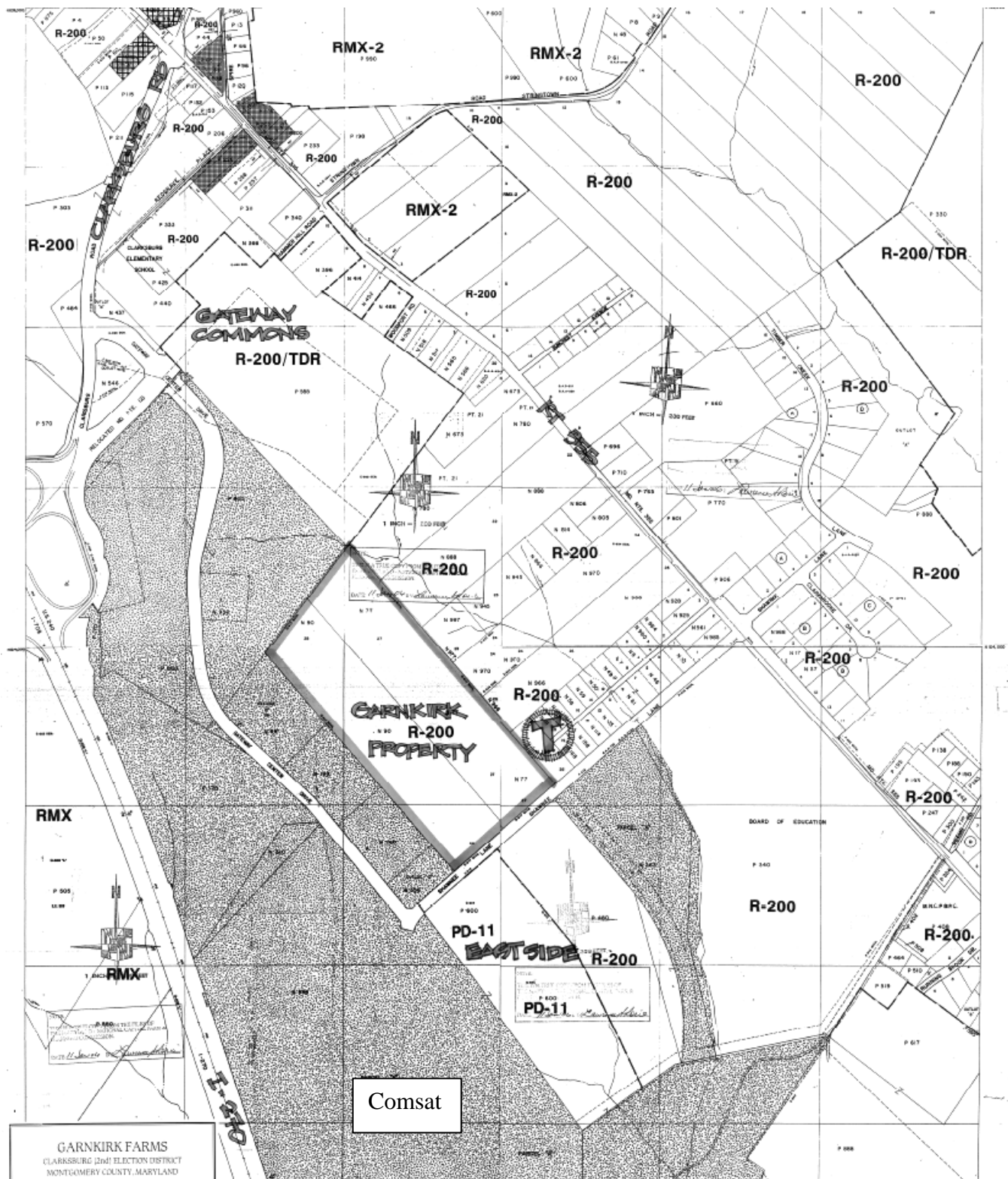
east; two schools on a large, R-200 tract owned by the Board of Education northeast of the site; residential development farther south, near West Old Baltimore Road; scattered single-family detached residences and a church, all in the R-200 Zone, between the subject site and MD 355 to the east; and undeveloped land to the south and northeast that has been approved for mixed residential development at densities similar to that proposed here ("Eastside" to the south and "Gateway Commons" to the north, the latter under construction). The relationship of the subject property to existing land uses in the surrounding area may be seen on the aerial photograph below.

Aerial Photograph with Surrounding Area, from Staff Report, Ex. 45



Prevailing zoning patterns in the immediate vicinity of the subject site may be seen on the zoning map below.

Zoning Vicinity Map, Ex. 54



C. Zoning and Land Use History

The subject property was classified under the R-R (Rural Residential) Zone in the 1958 County-wide comprehensive rezoning. The R-R Zone was later redesignated the R-200 Zone, and the subject property's zoning has remained the same since then. The R-200 Zone was reaffirmed most recently by Sectional Map Amendment G-710 in 1994, which followed the adoption of the *1994 Clarksburg Master Plan*. A previous application for rezoning of the property to the I-3 zone, LMA No. G-617, was filed in 1988 and subsequently withdrawn.

D. Proposed Development

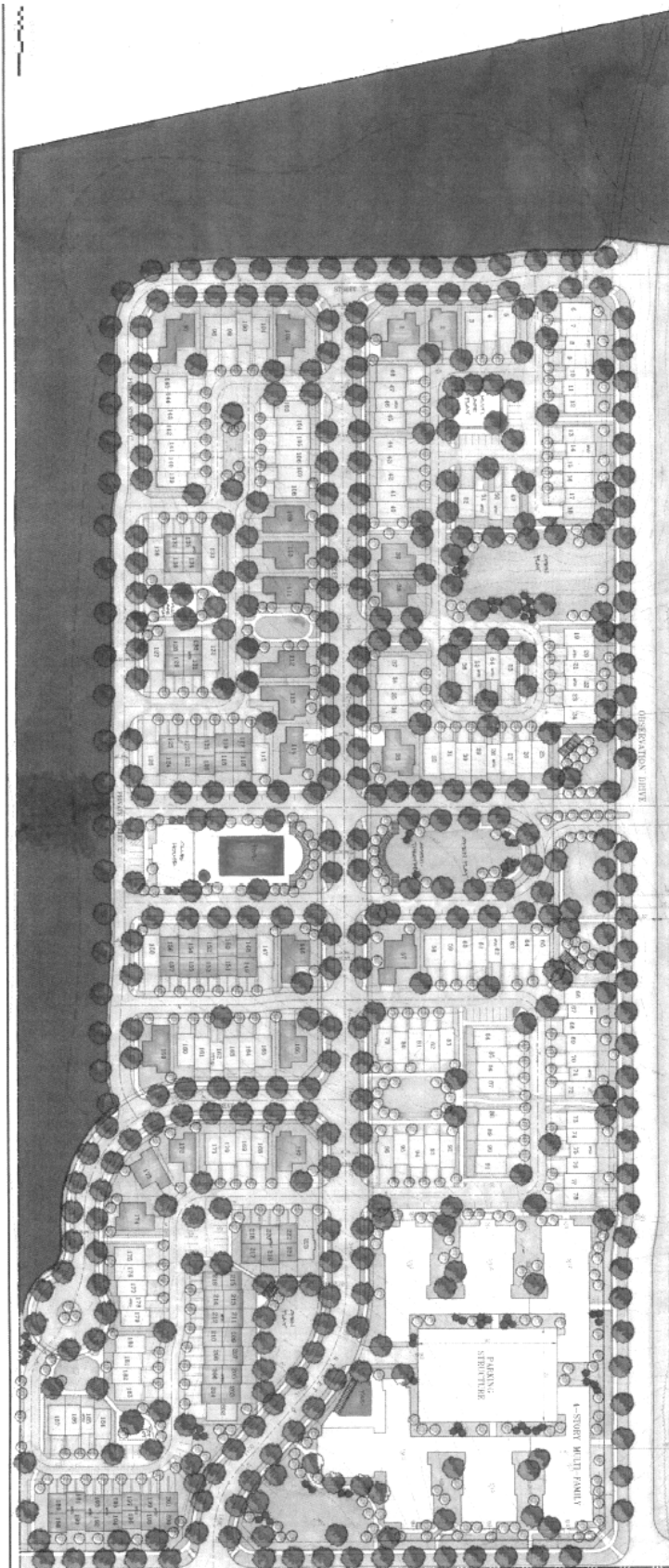
The Applicant proposes to construct a residential community with 408 residential units of three types, as follows:

Multi-family units	184 (45 percent)
Single-family attached	203 (50 percent)
Single-family detached	21 (5 percent)

The 203 single-family attached units would consist of 141 townhouses (35 percent of the total units) and 62 two-over-two units (15 percent of the total units).

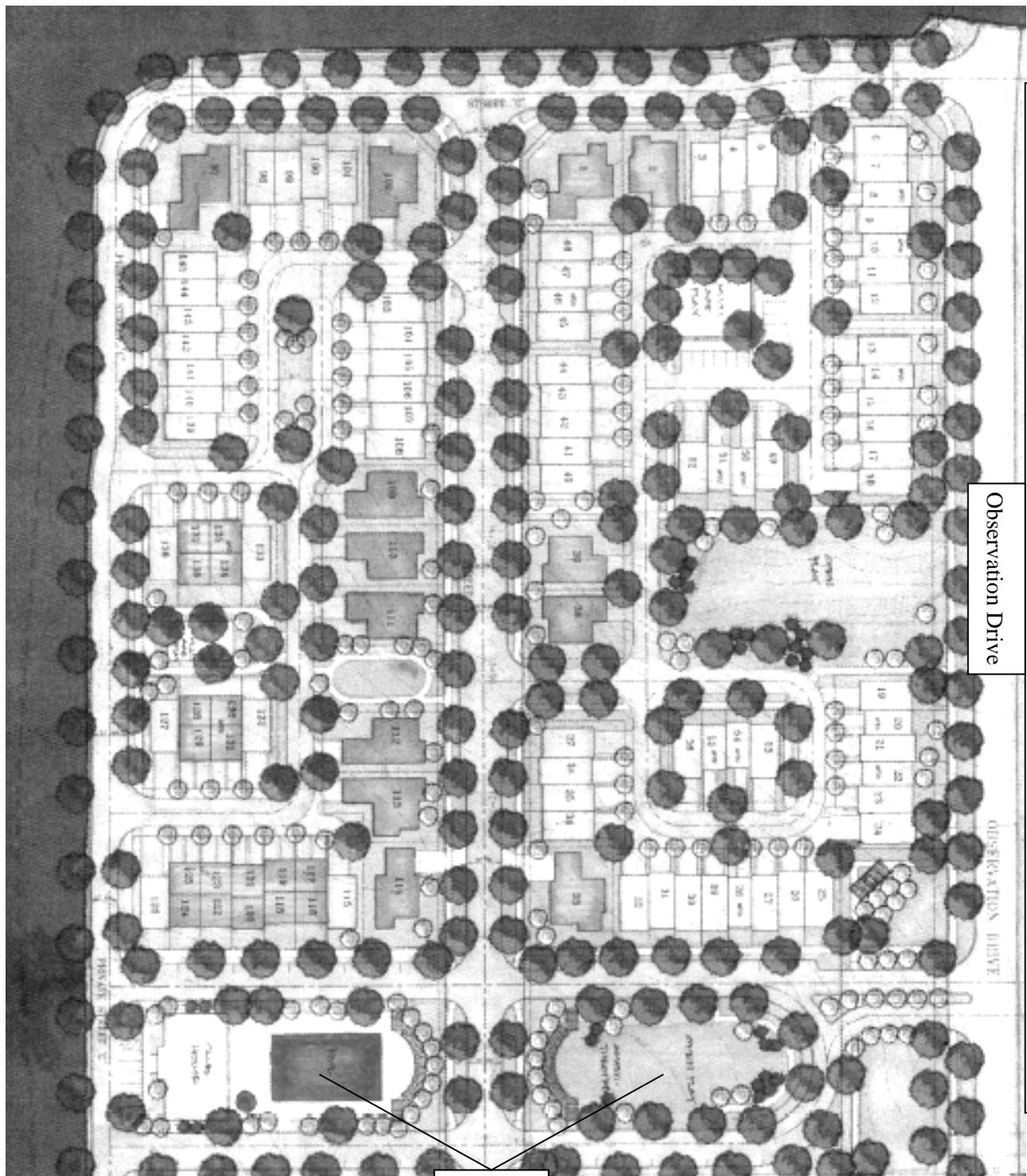
The Development Plan depicts a community with a main road, Street "A," which connects to Shawnee Lane and intersects other internal roads which, in turn, intersect Observation Drive. The streets and sidewalks connect in a grid pattern, with two vehicular entrances from Observation Drive and one from Shawnee Lane (opposite the proposed Eastside entrance). Homes are clustered around recreational facilities and green spaces – two swimming pools, a clubhouse, an outdoor amphitheater and several open play and sitting areas. Except for the multi-family building, each block of homes contains a variety of residential unit types, with single-family detached homes often abutting or confronting townhouses, and townhouses often abutting or confronting detached homes and two-over-two units. The multi-family units are shown in a single building, comprised of several wings surrounding an interior parking structure. This building is to be located in the southeast corner of the site, across from proposed transit stop. Most wings of the building are directly across internal streets from other unit types or a common play area.

The layout may be seen below and, at a larger scale, on the next two pages.



Conceptual Landscape Plan, Ex. 48(d)

The conceptual landscape plan is reproduced in two parts on this page and the next, to provide a more detailed view of the site layout.

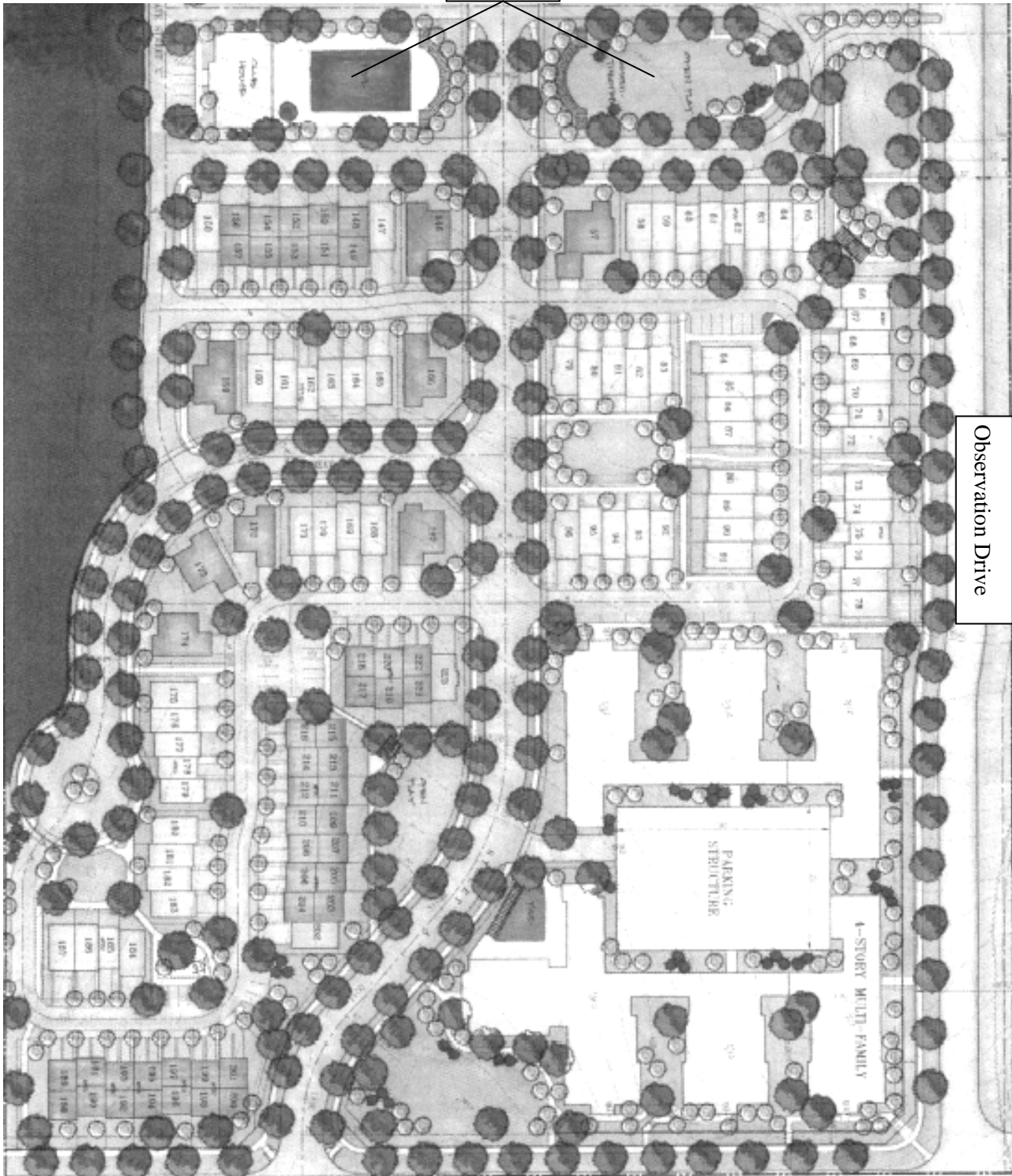


Conceptual Landscape Plan, from Center of Site to Western Edge of Development Area
Excerpted from Ex. 48(d)

Central
Recreation
Areas

Conceptual Landscape Plan, from Center of Site to Western Edge
of Development Area. Excerpted from Ex. 48(d)

Observation Drive



The relationship between the proposed development and its surroundings may be seen on the aerial photograph on the next page, with the proposed development superimposed.

Aerial Photograph with Proposed Development Superimposed, Ex. 48(f)

The Applicant proposes to construct Observation Drive with one lane in each direction, on land to be dedicated from the subject property, for a distance of 1,700 feet beginning at Shawnee Lane and ending just past the second entry point into the site. The center line for Observation Drive is proposed to coincide with the property line for the subject site, consistent with the alignment recommended in the Master Plan and on a more detailed map subsequently created by Technical Staff. See Clarksburg Development Activity Map, Ex. 62(d). The Master Plan calls for Observation Drive to ultimately be widened to two travel lanes in each direction, with a median wide enough to accommodate the proposed transitway, and to connect with the portion of Observation Drive being built for the Gateway Commons development to the north. That, in turn, would connect to Stringtown Road extended, providing an easy route from the subject site to I-270. The widening and extension would not, however, be the responsibility of this Applicant.

The proposed development would abut roadways to the east and south, confronting a mix of residential uses and non-residential uses with substantial setbacks. To the north and west, an industrial park wraps around two sides of the subject site. The proposed community would be buffered from the noise and activity of the industrial park by retention of a substantial wooded buffer running along the full length of the north side of the development, and along about 75 percent of the western side. The Applicant indicates that a wood-chip trail is proposed through the forested area, and views of the forested area would be available from the roadway shown along the northern and western edges of the development, as well as from homes facing that roadway.³ Technical Staff describes the forested buffer as about 100 feet deep on the west side and 275 feet at its widest point along the northwestern boundary. Staff recommends that the Applicant improve the quality of the retained forested area by planting suitable hardwood species that will make it more attractive for residents. Based on the Development Plan and the aerial photograph on page 14, above, it

³ The Environmental Planning Staff Memorandum attached to the July Staff report indicates that a Category One Forest Conservation Easement will be required for any forest that is credited for forest save. Typically, this designation prohibits trails of any kind. The Applicant's written submissions indicate that the forested buffer area is intended to satisfy the required 20-percent on-site forest retention, suggesting that a trail may be prohibited.

appears that the portion of the community that would not have a forested buffer, in the southeast corner of the site, would abut a currently undeveloped area of the industrial park.

A pedestrian network parallel to, but separate from, the street system would ensure pedestrian access and safety. Street parking is provided, in addition to driveways and garages, for greater convenience.

One element of the proposed development that bears particular attention is the two-over-two units. The *Clarksburg Master Plan* recommends the following mix of unit types for the Transit Corridor District, which includes the subject site:

Multi-family	30 – 50 percent
Single-family attached	40 – 60 percent
Single-family detached	5 – 10 percent

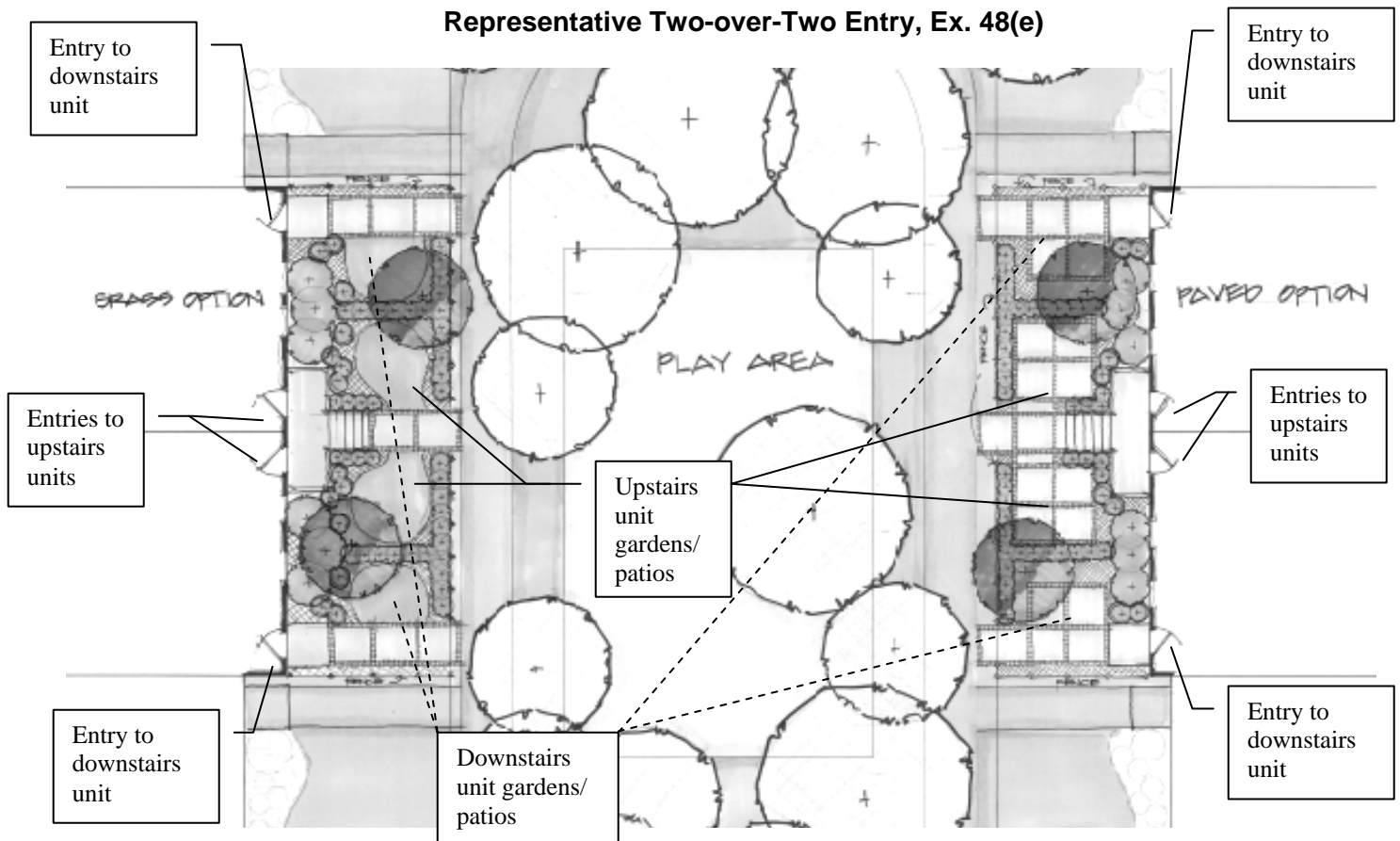
As shown on page 10 above, the Development Plan in this case proposes 45 percent multi-family units, 50 percent single-family attached (35 percent townhouses and 15 percent two-over-two units), and five percent single-family detached. At the time of the Planning Board's review of the original plan for this site, there was considerable controversy over whether the two-over-two units qualified as "single-family attached," or should be considered multi-family units. The original plan proposed 172 two-over-two units, or 37 percent of the total units, while townhouses comprised only 17 percent of the total (77 units). See Ex. 45 at 2. If the two-over-two units were considered multi-family instead of single-family attached, the Applicant might have had difficulty establishing substantial compliance with the Master Plan.

On the current Development Plan, two-over-two units have been significantly reduced in number and percentage. Moreover, their design has been revised to correspond more closely to the definition of a "Dwelling unit, one-family attached" in Section 59-A-2.1 of the Zoning Ordinance, which follows:

A dwelling unit that is in a structure consisting entirely of dwelling units, each of which (1) is attached to one or more other dwelling units, (2) has at least one direct entrance from the outside, and (3) has an abutting ground level outdoor area for the exclusive use of its occupants. This definition does not include a "dwelling unit, townhouse," as defined in this section.

The Applicant's architect, John Stovall, used an enlarged drawing of a block of four two-over-two units, reproduced below, to describe the design of the units and why they meet the definition of single-family attached. It is clear from the basic site layout that they would all be in exclusively residential buildings, and would be attached to other dwelling units. Mr. Stovall pointed out that in the representative configuration shown below, the lower units would have their entrances at either end of the block of four units, and the upper units would have their entrances in the middle of the block of four. The ground-level entrances to the upper units would lead to staircases, with internal dwelling entrances at the top of the stairs. The green space for each unit would be adjacent to the walkway leading to its exterior door. The enlargement depicts two options for "finishing" the green space for each unit – an actual green area adjacent to the sidewalk, or a patio area extending from the sidewalk. Tr. at 115. Mr. Stovall indicated that each two-over-two unit would also have a garage underneath the unit, and a driveway with space to park an additional vehicle.

Representative Two-over-Two Entry, Ex. 48(e)



Technical Staff concludes that the two-over-two units are now “noticeably designed with ground level outdoor spaces for the exclusive use of each unit with its own private outdoor entrance in a manner that clearly distinguishes the units as single-family attached.” Ex. 45 at 13. Accordingly, the two-over-two units may properly be considered single-family attached.

The Applicant has taken a novel approach to the question of building height. The Zoning Ordinance defines building height by measuring from the street grade to the highest point of roof surface of a flat roof or, for sloped roofs, to the mean height level between the eaves and ridge. See Code § 59-A-2.1. Unlike many zones, the PD Zone does not prescribe maximum building heights, in most cases. It has only two height limitations for PD-11 development: (1) multi-family buildings may not exceed four stories in a development with less than 800 units, per Section 59-C-7.131⁴; and (2) no building can be constructed to a height greater than its distance from any adjoining land for which the area master plan recommends a one-family detached zone, per Section 59-C-7.15(b).

The Applicant has presented building height as composed of two variables:

1. The “building structure height” as measured from the floor of the first above-grade level to the mid-point of the roof.
2. The grade-dependent height from the centerline of the street to the floor of the first above-grade level.

Together, these two components approximate the standard calculation of building height prescribed in the Zoning Ordinance. The Applicant has split these two components so that it can make commitments about the building structure height, without taking into account grading conditions. For each building type proposed on the Development Plan, the Applicant has committed to a number of stories, a maximum “building structure height” and a total height that will

⁴ The Staff Reports states that the story limits in this section are not “framed as height requirements under which a finding of compliance is to be made.” See Ex. 45 at 13. Staff’s supplemental memorandum suggest that this statement is a reference to the absence of numerical height limits in the zone, not a suggestion that the limit of four *stories* is something less than mandatory. See Ex. 64.

not be exceeded, including both of the components described above. The “not to exceed” heights were derived by taking the building structure heights and adding 12 feet, which is the maximum grade change anticipated between any lot and any roadway on this site. (As noted earlier, Observation Drive would sit about 10 to 12 lower than the rest of the subject site.) The Applicant suggests that typically, the total building height will be approximately three feet higher than the building structure height. It has reserved the right, however, to argue at preliminary plan and site plan for the higher “not to exceed” height levels at any point on the site where grading justifies it.

Technical Staff considers it excessive to add 12 feet of height to structures due to grading conditions. See Ex. 45 at 15. Staff and the Planning Board have urged the Applicant to avoid placing taller structures along Observation Drive, where there would be a big grade differential with the street. Staff reports that during the Planning Board’s final deliberations on this case, the Applicant indicated that it is bound not to locate the tallest building on the highest elevation. See Ex. 64. This commitment is not reflected in the text of the Development Plan, but the plan layout, which is a binding representation of the approximate locations of each unit type, shows only townhouse units and the multi-family building along Observation Drive. The townhouses would not be among the tallest structures; they are described as three or four stories, with a building structure height of 40 feet and a maximum total height of 52 feet. This compares to the two-over-two units, which are described as four stories, with a building structure height of 52 feet and a maximum total height of 63 feet. From a height perspective, then, the townhouses appear to be a reasonable choice along Observation Drive. The multi-family building is described as four stories, with a building structure height of 52 feet and a total maximum height of 64 feet, making it the tallest structure proposed for this site. It is recommended, nevertheless, for the corner of Observation Drive and Shawnee Lane, to place the highest concentration of residents in close proximity to the transit stop proposed for the opposite corner.

Technical Staff recommends that, beyond the commitments the Applicant has already made, specific building heights should be addressed at site plan. See Ex. 64.

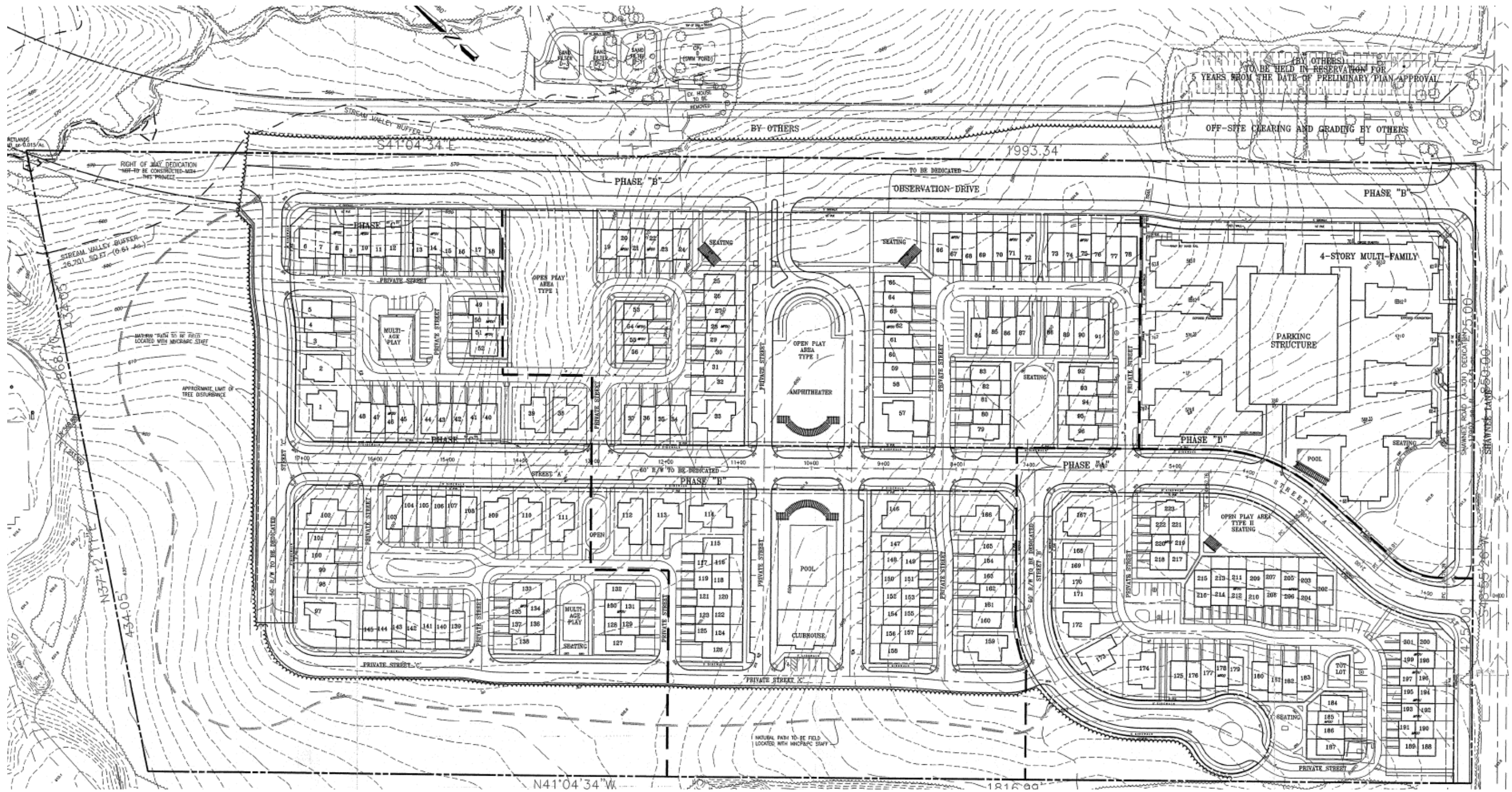
E. Development Plan

Pursuant to Code § 59-D-1.11, development under the PD Zone is permitted only in accordance with a development plan that is approved by the District Council when the property is reclassified to the PD Zone. This development plan must contain several elements, including a land use plan showing site access, proposed buildings and structures, a preliminary classification of dwelling units by type and number of bedrooms, parking areas, land to be dedicated to public use, and land intended for common or quasi-public use but not intended to be in public ownership. Code §59-D-1.3. The Development Plan is binding on the Applicant except where particular elements are identified as illustrative or conceptual. The Development Plan is subject to site plan review by the Planning Board, and changes in details may be made at that time. The principal specifications on the Development Plan – those that the District Council considers in evaluating compatibility and compliance with the zone, for example – may not be changed without further application to the Council to amend the Development Plan.

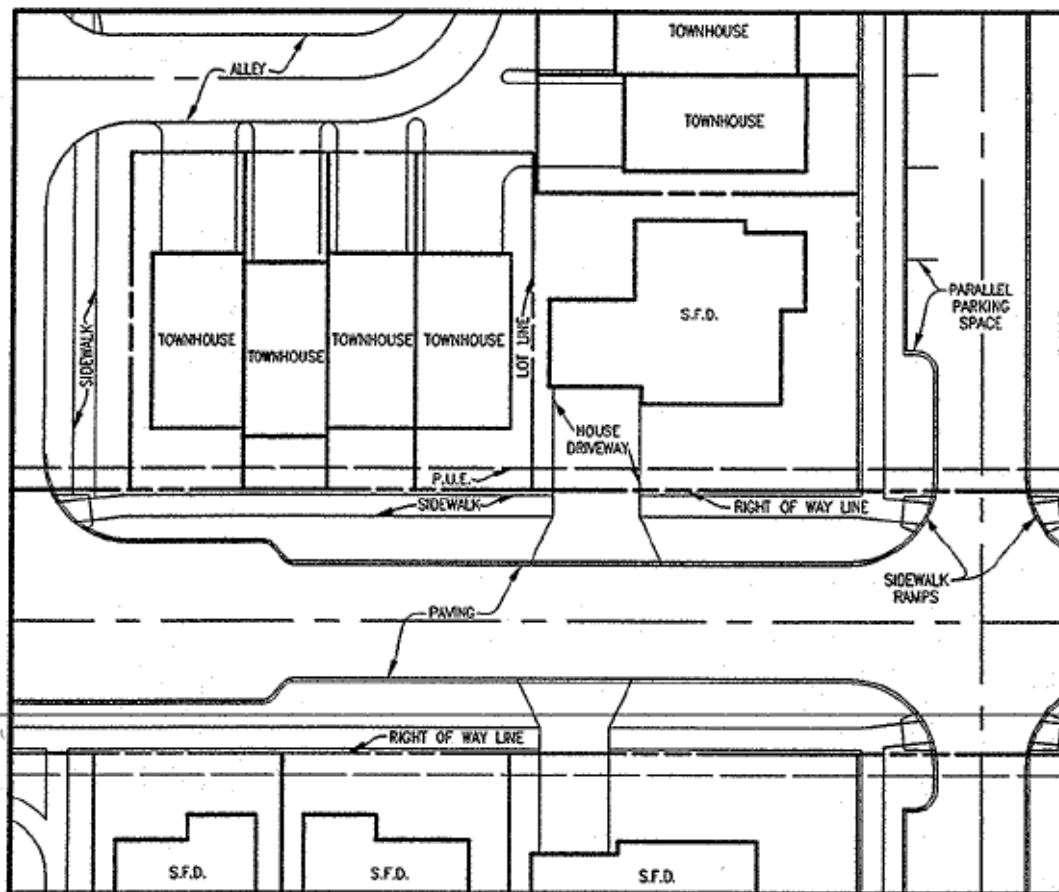
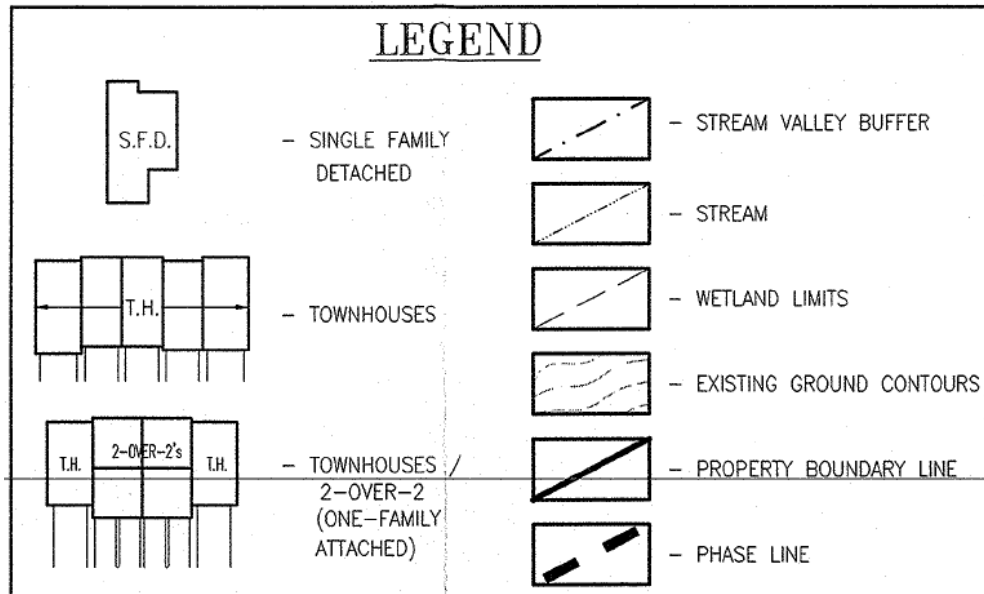
The principal component of the Development Plan in this case is a two-page document entitled Development Plan, Exhibits 65(a) – (b), which is reproduced in full on pages 21 and 23 below and at a larger scale on subsequent pages. Additional elements of the Development Plan include an aerial photograph of the area (Ex. 48(f)), a zoning map indicating the relationship between the subject site and neighboring zoning and land uses (Ex. 54), and a Natural Resources Inventory/Forest Stand Delineation (“NRI/FSD”), (Ex. 31(x)).

Exhibits 65(a) and (b) satisfy the requirements of Code § 59-D-1.3 by showing access points, approximate locations of existing and proposed buildings and structures, preliminary classification of dwellings by number of bedrooms, parking areas, intended right-of-way dedications for Observation Drive, Shawnee Lane and internal Streets A, B and C, and areas intended for common use but not public ownership (recreation areas, clubhouse and forest conservation area). The site layout is shown on the next page.

Development Plan Sheet One Graphics, from Ex. 65(a)



Development Plan, Sheet 1, Legend. From Ex. 65(a).



Sheet Two of the Development Plan is reproduced in full on the next page. Its components are presented in larger scale on the pages that follow, with appropriate explanations.

[illegible][illegible][illegible]

1. Administrative Information	Member of the Board	W-153
2. Organization	U.S. Office of the Sheriff, 100 County of Jefferson, New York, New York	0-15
3. Organizational Structure	Organizational Structure Chart	0-15.3
4. Position	Deputy Sheriff	0-15.3.1
5. Supervisor	Chief of Police	0-15.3.1.1
6. Reporting Supervisor	Chief of Police	0-15.3.1.1
7. Reporting Supervisor's Title	Chief of Police	0-15.3.1.1
8. Reporting Supervisor's Organization	Chief of Police	0-15.3.1.1
9. Reporting Supervisor's Address	Chief of Police	0-15.3.1.1
10. Reporting Supervisor's Phone Number	Chief of Police	0-15.3.1.1
11. Reporting Supervisor's Fax Number	Chief of Police	0-15.3.1.1
12. Reporting Supervisor's E-mail Address	Chief of Police	0-15.3.1.1
13. Reporting Supervisor's Social Security Number	Chief of Police	0-15.3.1.1
14. Reporting Supervisor's Date of Birth	Chief of Police	0-15.3.1.1
15. Reporting Supervisor's Date of Hire	Chief of Police	0-15.3.1.1
16. Reporting Supervisor's Date of Termination	Chief of Police	0-15.3.1.1
17. Reporting Supervisor's Date of Resignation	Chief of Police	0-15.3.1.1
18. Reporting Supervisor's Date of Retirement	Chief of Police	0-15.3.1.1
19. Reporting Supervisor's Date of Death	Chief of Police	0-15.3.1.1
20. Reporting Supervisor's Date of Dismissal	Chief of Police	0-15.3.1.1
21. Reporting Supervisor's Date of Suspension	Chief of Police	0-15.3.1.1
22. Reporting Supervisor's Date of Reinstatement	Chief of Police	0-15.3.1.1
23. Reporting Supervisor's Date of Reassignment	Chief of Police	0-15.3.1.1
24. Reporting Supervisor's Date of Transfer	Chief of Police	0-15.3.1.1
25. Reporting Supervisor's Date of Promotion	Chief of Police	0-15.3.1.1
26. Reporting Supervisor's Date of Demotion	Chief of Police	0-15.3.1.1
27. Reporting Supervisor's Date of Recall	Chief of Police	0-15.3.1.1
28. Reporting Supervisor's Date of Rehire	Chief of Police	0-15.3.1.1
29. Reporting Supervisor's Date of Reemployment	Chief of Police	0-15.3.1.1
30. Reporting Supervisor's Date of Reassignment	Chief of Police	0-15.3.1.1
31. Reporting Supervisor's Date of Transfer	Chief of Police	0-15.3.1.1
32. Reporting Supervisor's Date of Promotion	Chief of Police	0-15.3.1.1
33. Reporting Supervisor's Date of Demotion	Chief of Police	0-15.3.1.1
34. Reporting Supervisor's Date of Recall	Chief of Police	0-15.3.1.1
35. Reporting Supervisor's Date of Rehire	Chief of Police	0-15.3.1.1
36. Reporting Supervisor's Date of Reemployment	Chief of Police	0-15.3.1.1
37. Reporting Supervisor's Date of Reassignment	Chief of Police	0-15.3.1.1
38. Reporting Supervisor's Date of Transfer	Chief of Police	0-15.3.1.1
39. Reporting Supervisor's Date of Promotion	Chief of Police	0-15.3.1.1
40. Reporting Supervisor's Date of Demotion	Chief of Police	0-15.3.1.1
41. Reporting Supervisor's Date of Recall	Chief of Police	0-15.3.1.1
42. Reporting Supervisor's Date of Rehire	Chief of Police	0-15.3.1.1
43. Reporting Supervisor's Date of Reemployment	Chief of Police	0-15.3.1.1
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46. Reporting Supervisor's Date of Promotion	Chief of Police	0-15.3.1.1
47. Reporting Supervisor's Date of Demotion	Chief of Police	0-15.3.1.1
48. Reporting Supervisor's Date of Recall	Chief of Police	0-15.3.1.1
49. Reporting Supervisor's Date of Rehire	Chief of Police	0-15.3.1.1
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194. Reporting Supervisor's Date of Demotion	Chief of Police	0-15.3.1.1
195. Reporting Supervisor's Date of Recall	Chief of Police	0-15.3.1.1
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197. Reporting Supervisor's Date of Reemployment	Chief of Police	0-15.3.1.1
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202. Reporting Supervisor's Date of Recall	Chief of Police	0-15.3.1.1
203. Reporting Supervisor's Date of Rehire	Chief of Police	0-15.3.1.1
204. Reporting Supervisor's Date of Reemployment	Chief of Police	0-15.3.1.1
205. Reporting Supervisor's Date of Reassignment	Chief of Police	0-15.3.1.1
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208. Reporting Supervisor's Date of Demotion	Chief of Police	0-15.3.1.1
209. Reporting Supervisor's Date of Recall	Chief of Police	0-15.3.1.1
210. Reporting Supervisor's Date of Rehire	Chief of Police	0-15.3.1.1
211. Reporting Supervisor's Date of Reemployment	Chief of Police	0-15.3.1.1
212. Reporting Supervisor's Date of Reassignment	Chief of Police	0-15.3.1.1
213. Reporting Supervisor's Date of Transfer	Chief of Police	0-15.3.1.1
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215. Reporting Supervisor's Date of Demotion	Chief of Police	0-15.3.1.1
216. Reporting Supervisor's Date of Recall	Chief of Police	0-15.3.1.1
217. Reporting Supervisor's Date of Rehire	Chief of Police	0-15.3.1.1
218. Reporting Supervisor's Date of Reemployment	Chief of Police	0-15.3.1.1
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262. Reporting Supervisor's Date of Transfer	Chief of Police	0-15.3.1.1
263. Reporting Supervisor's Date of Promotion	Chief of Police	0-15.3.1.1
264. Reporting Supervisor's		

Question	Answer
1. What is the purpose of the research?	1. The purpose of the research is to investigate the effects of the proposed intervention on the health and well-being of the study population.
2. What are the research objectives?	2. The research objectives are to: <ul style="list-style-type: none"> 1. Determine the prevalence of the condition in the study population. 2. Assess the impact of the intervention on the health and well-being of the study population. 3. Identify the factors that influence the health and well-being of the study population.
3. What is the research design?	3. The research design is a quasi-experimental design, involving a comparison between the intervention group and the control group.
4. What is the study population?	4. The study population consists of all individuals who are members of the study population and who are eligible for the intervention.
5. What is the intervention?	5. The intervention is a program of health and well-being interventions, including: <ul style="list-style-type: none"> 1. Health education and promotion. 2. Physical activity and exercise. 3. Nutrition and diet. 4. Stress management and relaxation techniques.
6. What is the control group?	6. The control group consists of all individuals who are members of the study population and who are not eligible for the intervention.
7. What are the data collection methods?	7. The data collection methods are: <ul style="list-style-type: none"> 1. Self-reported data (questionnaires, interviews). 2. Objective data (physical activity monitors, blood pressure monitors).
8. What are the data analysis methods?	8. The data analysis methods are: <ul style="list-style-type: none"> 1. Descriptive statistics (mean, standard deviation, frequency). 2. Inferential statistics (t-test, chi-square, ANOVA).
9. What are the expected results?	9. The expected results are: <ul style="list-style-type: none"> 1. A decrease in the prevalence of the condition in the intervention group compared to the control group. 2. An increase in the health and well-being of the intervention group compared to the control group.
10. What are the limitations of the study?	10. The limitations of the study are: <ul style="list-style-type: none"> 1. The study is a quasi-experimental design, which limits the ability to establish causality. 2. The study population is not representative of the general population. 3. The study is limited by the self-reported data.
11. What are the conclusions of the study?	11. The conclusions of the study are: <ul style="list-style-type: none"> 1. The proposed intervention has a positive impact on the health and well-being of the study population. 2. The intervention is a cost-effective way to improve the health and well-being of the study population.
12. What are the recommendations for future research?	12. The recommendations for future research are: <ul style="list-style-type: none"> 1. Conduct a randomized controlled trial to evaluate the effectiveness of the intervention. 2. Investigate the long-term effects of the intervention. 3. Explore the impact of the intervention on the health and well-being of the study population.

[illegible]

	Age 10	Age 12
Single family, detached	25	35
Single family, attached/terraced	40	55
Single family, semi-detached	35	50
Multi-unit	55	75
Commercial	30	40

[illegible][illegible]

The Development Plan would be improved by the addition of specific widths for the right-of-way dedications proposed for Observation Drive and Shawnee Lane, consistent with the testimony, Applicant's written submissions and the Staff Report. The evidence establishes the Applicant's intent to dedicate a 25-foot-wide strip of land along the southern property line for Shawnee Lane, consistent with a 25-foot dedication that was made for the Eastside development to the south. Together, these dedications would allow Shawnee Lane to be widened to the full 120-foot right-of-way recommended in the Master Plan. See Ex. 48(m) at 7; Ex. 45 at 9.

The evidence further establishes the Applicant's intent to dedicate the land necessary for the construction of two lanes of Observation Drive along the northern property line. This would require a dedication of 75 feet along most of the northern property line, providing half of the 150-foot right-of-way recommended in the Master Plan. At the east end of the northern property line, the Applicant has agreed to dedicate an additional 16 feet of land to provide for a 166-foot right-of-way section, which is the width Technical Staff now believes will be necessary for the transit stop proposed at that location. See Ex. 48(m) at 7, 18; Ex. 48(a) at 5; Tr. at 9. The approval action recommended in this report provides for the specific dedication widths to be placed on the Development Plan when it is submitted for certification, if the rezoning is approved.

The Development Plan specifies that the layout and building footprints shown on the plan are approximate. The intent of this language is to allow for minor shifts in lot lines and building locations during preliminary plan and site plan review.

Sheet Two of the Development Plan, Ex. 65(b), specifies (in language that is not described as illustrative, and therefore is binding) the number of units and the setbacks proposed for each housing unit type. These elements are shown on the project data table and building setbacks table on the next two pages.

Project Data Table

<u>Development Standards</u>	<u>Required</u>	<u>Proposed</u>
PD-11 Zone		
Development Method		PD-11 w/MPDUs
Min. Area of Development (ac.)		37.18 Acres
Density of Development	489 d.u. (with MPDU bonus)	408 d.u.
Number of units:		
Single Family Detached	P* (* %)	21 (5%)
Single Family Attached (2 over 2)	98 (20**%)	62 (15%) (10 MPDU)
Town House	98 (20**%)	141 (35%) (18 MPDU)
Multi-Family	171 (35**%)	184 (45%) (23 MPDU)
Total number of units proposed		408 d.u.
Total number of MPDU's provided		51(12.5%)

* Indicates Permitted but no minimum or maximum requirements.

** Indicates the Minimum requirement..

Dwelling Units:

Single Family Detached

Min. Lot Area (sq. ft.)	NA	3,500 s.f.
Min. Lot Width @ street	25'	25'
Front setback from street	NA	15'
Rear yard setback	NA	3'
Side yard setback	NA	3'
Lot Coverage (%)	NA	60%

Single Family Attached (2 over 2)

Front setback from street	NA	10' (1)
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Town Homes

Min. Lot Area (sq. ft.)	NA	1000 s.f.
Setback from street (feet)	NA	10' (2)
Rear yard setback	NA	5'
Side yard setback	NA	0'

Multi-Family

Front setback from street	NA	10' (3)
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(1) Setback from Shawnee Lane is 25'

(2) Setback from Shawnee Lane and Observation Drive is 25'

(3) Setback from Shawnee Lane and Observation Drive is 20'

Building Setback (Binding)		
	From Shawnee Lane	From Observation Drive
	<i>Not Less Than</i>	<i>Not Less Than</i>
Single Family Attached [Townhome]	25'	25'
Single Family Attached [2/2]	25'	Not Applicable
Multifamily	20'	20'

As discussed in the previous section, the Development Plan provides, for each building type, binding limitations for the building structure height and a total “not to exceed height” that takes into account potential grading conditions. If the rezoning is approved, implementation of this aspect of the Development Plan will require careful attention by Technical Staff and the Planning Board, to ensure that grading issues do not result in building heights that are incompatible with other uses on site, or with surrounding uses. The binding provisions concerning height are reproduced below and on the next page, excerpted from Sheet Two of the Development Plan, Ex. 65(b).

Building Structure Height (Binding)	
The height of the building from the floor of the first above-grade level, to the mid-point of the roof. This does not represent the height as calculated in the zoning ordinance.	
	<i>Not to Exceed</i>
Single Family Detached	29'
Single Family Attached [Townhome]	40'
Single Family Attached [2/2]	51'
Multifamily	52'
Clubhouse	24'

Zoning Ordinance Height (Binding)		
The height as measured by the Zoning Ordinance. This is the Building Structure Height plus the grade dependent height of centerline of street to floor of the first above grade.		
Single Family Detached	<i>Stories</i>	2 or 3 (a)
	<i>Typical</i>	32'
	<i>Not to Exceed</i>	41'
Single Family Attached [Townhome]	<i>Stories</i>	3 or 4 (a)
	<i>Typical</i>	43'
	<i>Not to Exceed</i>	52'
Single Family Attached [2/2]	<i>Stories</i>	4
	<i>Typical</i>	54'
	<i>Not to Exceed</i>	63'
Multifamily	<i>Stories</i>	4
	<i>Typical</i>	55'
	<i>Not to Exceed</i>	64'
Clubhouse	<i>Stories</i>	1 or 2
	<i>Not to Exceed</i>	36'
(a) As interpreted by DPS regulations for "story".		

Sheet Two of the Development Plan also contains an extensive, detailed list of "Binding Design Principles," which were created to ensure that the Development Plan would conform to the purpose clause of the PD Zone. As described by the Applicant's land planner, the Binding Design Principles were originally derived from a variety of published sources on New Urbanism, but have grown to address the concerns of Technical Staff and the local community. These principles address issues such as the interconnected street system, mix of residential unit types within each block, variety of lot widths and sizes, length of driveways, locations and size of open space, roof design, building design and visual screening of alleys. Many of the Binding Design Principles are too detailed for their implementation to be depicted on the Development Plan. Instead, as described by the Applicant's hearing representative, they link a future site plan submission to the Development Plan by specifying detailed design parameters that the site plan must satisfy. See Tr. at 49-50. From the Hearing Examiner's perspective, these Binding Design

Principles are extremely helpful, because they give the District Council binding information about the character of the proposed development at a level of detail that is highly unusual at the zoning stage. The Binding Design Principles are reproduced below, continuing onto the next page.

Binding Design Principles, from Development Plan Sheet Two, Ex. 65(b)

SCALE	
1	Neighborhood Center - The neighborhood shall have a functional center. A park or recreation facility is an appropriate neighborhood center.
2	Neighborhood Edge - The neighborhood shall be defined by comprehensible edges. Arterial or major roads, natural features such as forests and streams, or non-residential uses constitute appropriate edges.
STREET/SIDEWALK CIRCULATION SYSTEM	
3	The neighborhood street system shall be continuous and interconnected.
4	The neighborhood street system shall connect to the surrounding street and highway system at multiple locations.
5	Neighborhood streets shall be arranged so as to create blocks that are approximately 200 to 400 feet in length.
6	The neighborhood sidewalk/pedestrian (shared path) system shall provide continuous access to principal points of destination within the neighborhood.
7	The neighborhood sidewalk/pedestrian (shared path) system shall interconnect with the community-wide pedestrian system.
8	The neighborhood sidewalk/pedestrian system shall, wherever possible, run parallel to the street system, with connections to pedestrian trails through appropriate locations, such as, recreation and open space areas.
9	Garages shall be primarily rear-loaded and served by alleys. When front or side loaded garages are appropriate to respond to specific constraints such as corner conditions, road width, or lot depth, the garages should have a diminished appearance subordinate to the front of the houses.
10	The driveways of all homes shall be able to accommodate the full length of a car without impeding the sidewalk system.
11	On-street parking shall be utilized, where possible, to serve adjacent uses, in part to protect the sidewalk area for pedestrians, and to help define the streetscape.
12	The neighborhood shall include sufficient supplemental parking to accommodate visitors and guests.
13	Streetscapes that may include sidewalks, green panels, street trees, street lights, and street furniture shall be created where appropriate.
14	The applicant shall mitigate the view of alleys from public streets within the community through the use of a variety of techniques. Mitigation techniques may include the installation of landscape, hardscape, fencing, and detached garages where appropriate.

Binding Design Principles cont., from Development Plan Sheet Two, Ex. 65(b)

15	Primary neighborhood streets should implement the Clarksburg Streetscape Guidelines where feasible and approved by the reviewing agencies.
BUILDINGS and LOTS	
16	A mix of residential unit types within each block shall be provided to achieve variety at the street scale.
17	Building Design – front facades and building materials shall vary within each block to create visual distinctions between dwellings within each block.
18	Roof designs and rooflines shall vary within each block to add visual distinction between buildings and account where appropriate for grading conditions.
19	A variety of lot widths and/or sizes shall be provided throughout the neighborhood.
20	Varying building heights shall be provided within the same street block and attention should be paid to the street width, building locations, and transitional building heights when establishing the appropriate maximum building height.
21	Access to non-multifamily unit front entrances shall be individualized, straightforwardly accessible, and clearly recognizable from the street. Each single family attached two-over-two unit shall have its own direct entrance from the outside.
22	Buildings shall face onto and have access to streets, with the exception of the use of small "mews" or "close" style access provided to a limited extent within a neighborhood.
23	Each two over two unit shall have a ground level outdoor green area in the front or side yard of each unit for the exclusive use of the occupants of such unit.
24	The front wall of detached garages for single-family detached dwelling units shall not project beyond the front of the dwelling or any porch or other projection along the front of the dwelling.
25	The multi-family building shall have at least two means of ingress and egress along the Observation Drive frontage of the building to provide convenient pedestrian access to the sidewalks and pathways that lead to the transit station planned for the intersection of Observation Drive and Shawnee Lane.
OPEN SPACE	
26	Open space shall be provided throughout the neighborhood at a scale appropriate to its location and function.
27	Open space and recreational facilities that form the center of the neighborhood shall be larger, more prominent visually, and accommodate greater patronage.
28	Smaller open space areas, such as, sitting areas and tot lots, shall be located throughout the neighborhood at convenient locations.
29	The applicant shall field locate and install a woodchip path, as noted on the plan. The exact location of the path shall be approved by Maryland-National Capital Park and Planning Commission staff.

The Development Plan specifies the number of parking spaces to be provided for each unit type, plus additional parking on the public and private roads, as shown below. Technical Staff indicates that the proposed off-street parking is consistent with Zoning Ordinance requirements.

Garnkirk Farms Parking Tabulations						
Required			Provided			
Unit Type	Dwelling Units	Required Parking		Garage	On-Lot	Total
Single Family Attached Townhomes (TH)	141	282	TH	282	282	564
Single Family Attached (2/2s)	62	124	2/2s	62	62	124
Single Family Detached (SFD)	21	42	SFD	42	34	76
Multi-family	184	254	Multi-family	289	0	289
1 Bedroom x 1.25 sp	90	113	Subtotal	675	378	1053
2 Bedroom x 1.50 sp	94	141				
			On Private Street/Alleys			136
Total Parking Required		702	Total Parking Provided			1189
			On Public Street (60' ROW only)			67
			Total Parking Provided including Public Streets			1256

Because the subject site is in the Clarksburg Special Protection Area, it is subject to specific guidelines found in MNCPPC's Guidelines for Environmental Management of Development in Montgomery County, January 2000 (the "Environmental Guidelines"). In accordance with these guidelines, the Applicant submitted a Preliminary Water Quality Plan to both the Department of Permitting Services ("DPS") and the Countywide Environmental Planning Division of MNCPPC. The submitted Preliminary Water Quality Plan provided for off-site treatment of the run-off from Observation Drive. This, Environmental Planning Staff and the Applicant agree, is necessary because the right-of-way for Observation Drive is at a lower elevation than the rest of the subject site, and drains away from the site. The Applicant proposes to use the property it has purchased on the east side of the Observation Drive right-of-way, known as the King property, to locate a series of sand filtration facilities and a dry pond.

DPS has approved the portion of the Preliminary Water Quality Plan under its purview, with a number of conditions unrelated to zoning stage review. See Ex. 48(h).

Environmental Planning Staff agreed to the concept of the proposed off-site stormwater management facilities because they would be located in a natural depression that is unforested, and their construction would involve removing the existing structure and impervious surface on the property, leading to an improved stream buffer condition at that location. See Ex. 64. Staff disagreed, however, with the Applicant's proposal to size the off-site facilities to treat run-off from the entire planned right-of-way, approximately 9.4 acres. Staff prefers that the facilities on the King property serve just the lanes to be built on the Applicant's property (plus, potentially, a half-acre area immediately adjacent to the roadway), which would reduce the run-off area for these facilities to 5.1 acres. See Ex. 64. The Applicant agreed to revise its plan accordingly, and the Planning Board approved the Preliminary Water Quality Plan at its meeting of July 27, 2006 based on the Applicant's commitment to make that change and three others. These changes are set forth on Sheet Two of the Development Plan in the following Water Quality Plan Binding Conditions:

<u>WATER QUALITY PLAN BINDING CONDITIONS</u>	
JULY 26, 2006	
THE GARNKIRK FARMS FINAL WATER QUALITY PLAN WILL BE SUBJECT TO THE FOLLOWING BINDING CONDITIONS, WHICH WILL BE IMPLEMENTED AS PART OF THAT PLAN AND THE PROPOSED DEVELOPMENT PLAN:	
(1)	THE APPLICANT SHALL REDUCE THE SIZE OF THE CURRENTLY PROPOSED WATER TREATMENT FACILITY ON THE KING PROPERTY BY REMOVING FROM THE FACILITY'S CAPACITY THE ANTICIPATED DRAINAGE OF THE TWO LANES OF OBSERVATION DRIVE TO BE CONSTRUCTED IN THE FUTURE.
(2)	THE APPLICANT SHALL DIRECT ROOFTOP DRAINAGE FROM BUILDINGS WEST OF OBSERVATION DRIVE TO ON-SITE WATER MANAGEMENT FACILITIES, AS FEASIBLE, TO MINIMIZE ON-SITE BUILDING DRAINAGE TO THE WATER MANAGEMENT FACILITY ON THE KING PROPERTY.
(3)	THE APPLICANT SHALL RECONFIGURE THE RESIZED WATER TREATMENT FACILITY ON THE KING PROPERTY TO MINIMIZE THE IMPACT ON THE STREAM VALLEY BUFFER;
(4)	THE APPLICANT SHALL DEPICT THE LOCATION OF THE STREAM VALLEY BUFFER ON THE KING PROPERTY ON BOTH THE DEVELOPMENT PLAN AND THE FINAL WATER QUALITY PLAN.

Sheet Two of the Development Plan specifies additional, textual binding elements, shown in the table on the next page. This table contains the statement noted earlier, that the layout and building footprints are approximate. It specifies a minimum 20-foot width for alleys (private streets), consistent with other representations that the private streets would be wide enough for emergency vehicles. See Ex. 48(m) at 13.

Water/Sewer Categories	W-1/S-3
Proposed Water/Sewer Service	W-1/S-3
Method of SWM Management	On & Off-Site Quality and Quantity per Preliminary Water Quality Plan
Topographical Information from	P.D.S. 2/7/2000
Contour Interval	2'
Boundary Information from	Charles P. Johnson & Assoc.
Maryland State Grid Datum Used	
Tax Map Reference	EV33
Areas	
Gross Tract Area	37.18 Ac.
Street Dedication	3.75 Ac.
Green Area	18.8 Ac, (51%)
100 Year Floodplain	None
Stream Valley Buffer	0.61 Ac.
Wetlands	0.01 Ac.
Proposed Bedrooms	
Townhomes	Range 3-4 Bedrooms
Single Family Detached	Range 5-6 Bedrooms
2 over 2's	Range 2-3 Bedrooms
Multi-Family	Range 1-2 Bedrooms
1. Soil information was taken from the 1995 Soil Survey of Montgomery County, Maryland.	
2. The layout and building foot prints shown on the development plan are approximate.	
3. Any structures on current property to be removed.	
4. Wetland Delineation is based on field investigation by McCarthy & Assoc.	
5. There are no known Threatened or Endangered plants or animals or critical habitat observed in the field or documented by the Maryland Dept. of Natural Resources on site.	
6. There is no Historical use of significance for this property.	
7. NRI-FSD (#4-03176) approved by MNCP&PC dtd November 28, 2005.	
8. One unnamed tributary of Little Seneca Creek crossed the site and flows southward as a First Order Stream. The tributary is considered Waters of the U.S. and is defined as being Class IV-P use.	
9. Minimum separation between Buildings is 8'	
10. At the time of Preliminary Plan the applicant shall seek a waiver, where necessary, of the requirement in Section 50-29(a)(2) of the Montgomery County Code that every lot shall abut on a street or road which has been dedicated to public use or which has acquired the status of a public road.	
11. The applicant will provide a blanket PUE across alleys to ensure adequate access for the units and the landscaping along street frontages.	
12. Alley width 20' unless shown otherwise.	

The table above also states that the Applicant may seek waivers from the Planning Board, during subdivision review, from the requirement that all single-family homes on individual lots must have frontage on a public street. This requirement does not apply to multi-family units or

two-over-two units, which do not sit on individual lots. Moreover, all of the single-family detached homes and many of the townhouses shown on the Development Plan would have frontage on a public street – Observation Drive, Shawnee Lane, Street A, Street B or the public portion of Street C. Development Plan Sheet One specifies that approximately 65 townhouses will require a waiver.

Technical Staff explains that the Planning Board is authorized to waive any part of the subdivision regulations based on a finding that practical difficulties or unusual circumstances prevent full compliance. See Ex. 64. Staff notes that in the past, the Planning Board has granted waivers where it found that practical difficulties existed in achieving master plan-desired, neo-traditional community design. Neo-traditional communities (following New Urbanism principles) have a hierarchy of streets, including private alleys, with a mix of housing types and densities, and green areas interspersed throughout. The Planning Board has waived public street frontage for lots that have frontage on public and private internal green spaces, which reduces the amount of paving necessary in a development. The Planning Board has also granted waivers for lots with frontage on a street “that has attained the status of a public road.” Ex. 64, fifth page. This involves the road being fully accessible to the public and to fire and rescue vehicles, and designed to minimum public road standards, except for right-of-way and pavement widths. Staff opines that appropriate findings can be made to support the necessary waivers for individually recorded townhouses on private streets at the subject site. *Id.*

The Development Plan is divided into four phases, which are identified on Sheet One. The phases break down the development into roughly the western quarter, the middle third, the southeast corner and the multi-family building. Both sheets of the Development Plan include the following language, allowing the four phases to be constructed in any order or simultaneously.

THE UNITS GARNKIRK FARMS WILL BE CONSTRUCTED IN FOUR (4) PHASES.
THE PHASING LINES ARE INDICATED ON THE DEVELOPMENT PLAN.

EACH OF THE INDIVIDUAL PHASES, ONCE COMPLETE, WILL INCORPORATE THE
VEHICULAR AND PEDESTRIAN CIRCULATION SYSTEMS, ALL REQUIRED UTILITIES,
THE RECREATIONAL AMENITIES AND THE OPEN SPACES ASSOCIATED WITH
THOSE INDIVIDUAL PHASES AS INDICATED ON THE DEVELOPMENT PLAN. THE
PHASES MAY OVERLAP, AND THE PHASES MAY NOT BE CONSTRUCTED IN
THE ORDER LISTED.

F. Master Plan

The subject property lies within the Transit Corridor District of the 1994 Clarksburg Master Plan (the “Master Plan”). The Master Plan envisioned Clarksburg “as a town, at a larger scale than proposed in the 1968 Clarksburg Master Plan but smaller than a corridor city such as Germantown.” Master Plan at 16, quoted in Ex. 48(m) at 6. The plan described its most critical function as establishing “a strong public commitment to the vision of Clarksburg as a transit-and-pedestrian oriented community surrounded by open space.” Master Plan at 1, quoted in Ex. 48(m) at 6. Technical Staff describes the Master Plan’s most significant challenge in the Transit Corridor District as maintaining the residential character of the area, which displays traditional up-county development patterns of single-family detached lots fronting on a road, while addressing the need for increased traffic capacity along MD 355. See Community-Based Planning Memorandum attached to July Staff Report (“CB Planning Memo”) at 2.

The Transit Corridor District is comprised of the “Transitway Area” and the “MD 355 Area.” The Transitway Area includes properties, such as the subject site, that would be traversed by the proposed transitway and are located between I-270 and Observation Drive. Technical Staff described the planning challenge in this area as introducing housing into a predominantly employment area, with a scale and intensity that will be compatible with neighboring subdivisions along MD 355, but with enough density to support transit. Technical Staff cites the following Master Plan objectives, listed on pages 54-58:

- Continue the present residential character along MD 355.
- Balance the need for increased carrying capacity along portions of MD 355 with the desire to retain a residential character along MD 355.
- Continue the present employment uses along I-270.
- Provide housing at designated areas along the transitway near significant employment uses.
- Allow small amounts of office and retail uses at transit stop areas as part of a mixed-use development pattern.

- Establish strong pedestrian and bicycle linkages to the greenway.
- Improve east-west roadway conditions.
- Provide an open space system, which includes small civic spaces at the transit stops.

The Master Plan also included a recommended housing mix for the Transitway Area:

Multi-family	30-50 percent
Single-family attached	40-60 percent
Single-family detached	5-10 percent

The Master Plan's Land Use and Transportation Map designates the subject property for residential use at a density of 9 to 11 units per acre. See Ex. 48(m) at 6. The Master Plan's Zoning Map recommends the subject site for a density of 7 to 11 units per acre. The Applicant's land planner, Phil Perrine, opined that the higher density range would be more appropriate at this site, near a transit stop. Tr. at 52. Technical Staff describes the Master Plan recommendation for the subject site as a maximum density of 11 units per acre. See CB Planning Memo at 3. By comparison, the Master Plan designates the area immediately east of the subject property for residential use at 2 to 4 units per acre, the property to the north for residential use at 7 to 9 units per acre, the bus depot and the Eastside property to the south for 9 to 11 units per acre, and the moving company property for 7 to 9 units per acre. Tr. at 95-96; see *also* Master Plan Zoning Map.

Technical Staff considers the proposed development to be consistent with the Master Plan for a number of reasons. First, it would provide 408 units of housing, at a density of 11 units per acre, "as recommended in the Master Plan." CB Planning Memo at 3. Staff considers this density appropriate for a property within walking distance of a proposed transit stop and existing and future employment uses. Second, the proposed development would support the construction of Observation Drive, which is intended as an alternate north-south thoroughfare, eventually connecting to Observation Drive in Germantown, to help accommodate anticipated traffic without

widening MD 355. Staff notes that widening MD 355 is to be avoided, as it would conflict with the Master Plan's objective to retain the road's present residential character.

Third, the development would have an interconnected street and sidewalk system, which is "essential in achieving a walkable and transit serviceable community." CB Planning Memo at 4. Fourth, it would offer a mix of unit types at the neighborhood level, as recommended in the Master Plan, and would be consistent with the unit mix proposed in the Master Plan for the Transitway Area.

Fifth, the development provides for a number of large and small recreation areas, with the large open spaces at the center of the site creating a central focus and gathering place in the heart of the community. Sixth, the proposed building heights, as measured in stories, would be appropriate and compatible with adjacent development, with three-story townhouses along Observation Drive, and four-story multi-family directly across from the future transit stop. Seventh, the plan proposes building setbacks "that are desirable and appropriate for the height of the buildings and adjacent street widths." *Id.* at 5. Eighth, the proposed plan provides for all required parking within garages and driveways, with additional street parking for guests. Ninth, the Binding Design Principles "will result in a walkable and functional neighborhood, attractively landscaped and proportionally arranged with a sense of center developed as a community-gathering place." *Id.* at 6.

Mr. Perrine similarly opined that the proposed development would be consistent with the objectives and the site-specific recommendations of the Master Plan and, "at the higher end of the master-planned density range, this proposal will provide the residential density that will be a major contributor to the future success of the transitway, and will provide MPDUs." Ex. 48(m) at 6. Mr. Perrine noted that while the location of the site, in close proximity to a future transit stop, suggests that it is best suited for higher-density development, the Development Plan includes single-family detached units to provide a broader range of housing types, and to implement the Master Plan's recommended housing mix for the area. *See id.*

G. Environmental Issues and Storm Water Management

As noted in Part III.E. above, because the subject site is within the Clarksburg Special Protection Area, which is an area designated by the County Council to provide a higher level of water quality protection for certain watersheds, the Applicant has submitted a detailed stormwater management concept plan called a Preliminary Water Quality Plan. This plan has been conditionally approved by DPS, and has been approved by the Planning Board with the addition of four conditions that are set forth on Sheet Two of the Development Plan. The special protection area requirements will also obligate the Applicant to monitor streams and wells throughout the area prior to and after development, if the project proceeds.

The Applicant's engineer, David O'Bryan, testified that the high point in the middle of the site splits the site into two drainage areas, one draining towards Shawnee Lane and the other towards Observation Drive. He noted that the stream that runs near the northwest corner of the site receives the major portion of the drainage from the site. The special protection area requirements obligate a developer to break up the drainage areas into areas of approximately one acre, and treat every acre independently. On the subject site, with the proposed density, this would result in about 30 small water quality treatment areas scattered throughout the site. The majority of these facilities would be located underground, because the type of development planned for the subject site does not lend itself to big open spaces between the units. These filtration devices would lead to larger quantity control storage units, which would discharge into the nearby stream.

The approved NRI/FSD indicates that there are no significant natural features on the subject property, such as rock outcroppings, scenic views, flood plains, or historic buildings or structures. A pocket of wetlands in the extreme northern corner of the property, within the Master Plan-recommended right-of-way for Observation Drive, is so small that it is not calculated in the NRI/FSD table. No rare, threatened, or endangered species were identified on the site.

Environmental Planning Staff reports that the Preliminary Forest Conservation Plan meets the basic parameters of the forest conservation law, and recommends approval of the

application. See Environmental Planning memorandum attached to July Staff Report. Mr. O'Bryan explains that under the PD Zone, on-site forest retention must equal at least 20 percent of the net tract area, in this case 7.37 acres. See Ex. 48(n) at 4. The Applicant satisfies this by designating 7.39 acres of forest for retention. See *id.* at 5. The total area of forest to be cleared for development is 29.32 acres, and an additional 5.84 acres of reforestation will be provided off-site. Technical Staff suggests that any forest conservation impacts from the use of the King property, which is not part of this rezoning request, can be addressed during subdivision review.

The small area of wetlands in the northern corner would not be affected by the proposed development. It would be affected by the eventual extension of Observation Drive to the north, because there is no way to make the connection to Gateway Commons without crossing the stream. That extension, however, and the associated environmental permits, would be the responsibility of the County, or perhaps a future developer.

H. Public Facilities

Under the County's Adequate Public Facilities Ordinance ("APFO," Code §50-35(k)), an assessment must be made as to whether the transportation infrastructure, area schools, water and sewage facilities, and police, fire and health services will be adequate to support a proposed development, and in turn, whether the proposed development would adversely affect these public facilities. Both the Planning Board and the Council have roles to play in this assessment process. The Planning Board reviews the adequacy of public facilities at subdivision, under parameters that the County Council sets each year in the Annual Growth Policy ("AGP") and biennially in the two-year AGP Policy Element.⁵ While the final test under the APFO is carried out at subdivision review, the District Council must first make its own evaluation as to the adequacy of public facilities in a rezoning case, because the Council has primary responsibility to determine whether the

⁵ See 2003-05 Annual Growth Policy – Policy Element, Resolution No. 15-375, adopted October 28, 2003, which remains in effect. The Hearing Examiner hereby takes official notice of the 2003-05 AGP Policy Element.

reclassification would be compatible with the surrounding area and would serve the public interest. The Council's evaluation of public facilities at the zoning stage is particularly important because of the discretionary nature of the Council's review, and the fact that the Council's review is much broader at the zoning stage than what is available to the Planning Board at subdivision, a process designed to more intensively examine the "nuts and bolts" of a development. The District Council is charged at the zoning stage with determining whether the proposed development would have an adverse impact on public facilities and, if so, whether that impact would be mitigated by improvements reasonably probable of fruition in the foreseeable future.

1. Transportation

Under the 2003-05 AGP Policy Element, which remains in effect, subdivision applications are subject to only one transportation test, Local Area Transportation Review ("LATR").⁶ The Planning Board recognizes its LATR Guidelines as the standard to be used by applicants in the preparation of reports to the Hearing Examiner for zoning cases. LATR Guidelines at 1. LATR involves a traffic study intended to evaluate whether a proposed development would result in unacceptable congestion at nearby intersections during the peak hours of the morning and evening peak periods (6:30 to 9:30 a.m. and 4:00 to 7:00 p.m.).

The Applicants performed a traffic study as required in this case, taking into account existing roads, programmed roads and available or programmed mass transportation, as well as existing traffic, traffic anticipated from nearby development that is approved but unbuilt ("background" traffic), and trips expected to be generated by the proposed development. Technical Staff directed the Applicant to study the effects of the proposed development on the critical lane volumes ("CLVs") at four nearby intersections: MD 121 at Gateway Center Drive; MD 355 at Stringtown Road; MD 355 at Shawnee Lane; and Gateway Center Drive at Shawnee Lane. Staff

⁶ See 2003-05 AGP Policy Element at 6-7; *Local Area Transportation Review Guidelines Approved and Adopted July 2004* ("LATR Guidelines") at 1. The Hearing Examiner hereby takes official notice of the LATR Guidelines.

Report, Ex. 45 at 33. The Applicant also studied CLV impacts at the site access point on Shawnee Lane, across from the proposed access point for the Eastside development. See Ex. 48(i), Table A.

In this case, the impact of programmed road improvements was substantial. One important roadway construction project underway in the area involves Stringtown Road, which currently terminates on the east side of MD 355 but is being extended westward, to Clarksburg Road (MD 121). This construction will form a new intersection with Gateway Center Drive and provide a more direct route to I-270 for trips generated east of MD 355. See Ex. 27(a) at 6. In addition, another road is being construction between MD 355 and MD 121 (Piedmont Road Extended, A-305), per master plan recommendations, to connect with other developer-committed improvements that provide a link to MD Rte. 27 in Germantown. These road improvements are expected to result in significant redistribution of traffic to and from the area east of MD 355, changing the CLV counts at three of the intersections studied in the present case quite substantially. See Ex. 48(i), Table A, Existing CLV "Count" vs. "Adjusted."

The Applicant's traffic study states that at the new intersection of Stringtown Road Extended and Gateway Center Drive, heavy northbound left turns during the evening peak hour call for a different lane configuration. With the modified lane configuration, CLVs at two of the intersections studied for this case decrease significantly. See Ex. 48(i), Table A, Background CLV "Current Lanes" vs. "Proposed Lanes."

At the intersection of MD 355 with Shawnee Lane, heavy southbound traffic during the morning peak period causes the intersection to exceed the congestion standard for the policy area. See Ex. 48(i) at 10. However, when improvements to the intersection and to Shawnee Lane that are included in the Preliminary Plan Application submitted for the Eastside development are taken into consideration, CLVs with background traffic fall below the congestion standard of 1,450 critical lane movements. *Id.*

The Applicant's traffic study takes all of these improvements into account in estimating existing and background CLVs, using a methodology approved by Technical Staff.

With 184 multi-family units, 203 single-family attached units and 21 single-family detached units, the proposed development is expected to generate a total of 199 trips during the weekday morning peak hour and 244 trips during the weekday evening peak hour. Ex. 48(i) at 19. The traffic study concluded, and Technical Staff agreed, that with the proposed development in place, and taking into account all of the relevant roadway improvements in the planning or construction stages, CLVs at the key intersections studied would remain below the CLV standard of 1,450 for the Clarksburg Policy Area, with the exception of the intersection of MD 121 and Gateway Center Drive (which will become the intersection of Gateway Center Drive and Stringtown Road Extended). See Ex. 27(c) at 19; Transportation Planning Staff Memo attached to July Staff Report ("Transportation Planning Memo"). The Applicant has committed to participate on a pro rata basis, along with the developer of the Eastside project and any other developer whose project contributes CLVs to the intersection of Stringtown Road Extended and Gateway Center Drive, to improvements at that intersection. See Tr. at 130-135; Ex. 48(i) at 4.

The necessary improvements at Stringtown Road and Gateway Center Drive are described in the Planning Board's recommendation as providing for exclusive, dual northbound left-turn lanes by redesigning one northbound through lane as an exclusive left-turn lane, and redesigning the third northbound lane as a shared through and right-turn lane. See Ex. 49 at 3. The Applicant's traffic expert, Mr. Petersen, testified that the use of the word "redesigning" in the Planning Board's memorandum was a typographical error, and the word should be "re-designating," as used in the Transportation Planning Memo. (Applicant's counsel explains that the typographical error apparently originated in his office, in language he prepared and submitted to the Planning Board as a proposed condition.) The proper wording of this requirement will undoubtedly be a subject of discussion during subdivision review, if the project goes forward. For zoning stage review, it suffices to say that the Applicant is committed to making a financial contribution to the improvements necessary to bring the CLV at the intersection of Stringtown Road Extended and Gateway Center Drive below the accepted threshold of 1,450. Based on this commitment,

Transportation Planning Staff concludes that the 408-unit development proposed for the subject site would not have an adverse impact on the surrounding roadway network. See Transportation Planning Memo at 4.

As noted earlier, the Applicant has purchased a piece of property on the other side of the Observation Drive right-of-way from the northeast corner of the site, known as the Cawood Property, which it has agreed to hold in reservation for possible future use, by the County or other public entities, for transit-related parking. Transportation Planning Staff recommended that the Applicant be required to hold the Cawood Property in reservation for ten years. The Applicant suggested three years, and the Planning Board settled on five years from the date of Preliminary Plan approval. See Ex. 49 at 3. The five-year time period is reflected on the Development Plan, which also depicts conceptually how the Cawood Property might be used for parking in the future.

Transportation Planning Staff also agrees with Mr. Petersen that the site access as shown on the Development Plan would be safe and adequate, and that the internal pedestrian circulation and walkways shown on the Development Plan would provide for safe and adequate pedestrian movement. See Transportation Planning Memo at 2.

Mr. Petersen further opined that if Observation Drive is never widened or extended per the Master Plan, the portion to be constructed by the Applicant will be sufficient, as part of the local road network, to provide adequate access to the subject site. See Tr. at 151.

2. Water and Sewer

The subject property is in Water Service Category W-1 and Sewer Service Category S-3, which allows public water and sewer to be extended to the property, as recommended in the Master Plan.

3. Schools

Montgomery County Public Schools ("MCPS") reports that the subject property is in the Clarksburg Elementary School, Rocky Hill Middle School, and Damascus High School service

areas. See Letter from Joseph J. Lavorgna to Elsabett Tesfaye dated February 3, 2005, attached to July Staff Report (“MCPS Letter”). The Hearing Examiner takes official notice of the determination by the Planning Board, on July 6, 2006, that under the current AGP Policy Element, for purposes of reviewing subdivisions in FY2007, all school clusters in the County are considered to have adequate capacity.

Based on the preliminary unit mix, Montgomery County Public Schools (“MCPS”) expects the proposed development to generate approximately 87 elementary, 34 middle and 48 high school students. See Ex. 56. Technical Staff submitted a letter from MCPS that describes school capacity as defined by MCPS. The letter is quite outdated, however, having been written in February, 2005. The current MCPS publication “FY 2007 Educational Facilities Master Plan and the FY 2007-2012 Capital Improvements Program” (the “MCPS CIP Report”) provides more up-to-date information on school capacity in individual clusters.⁷ That report indicates that although the recently constructed Little Bennett Elementary School will accommodate some of the growth in enrollment from Clarksburg development, an additional elementary school will be needed. See MCPS CIP Report at 4-19. A planning appropriation has been approved for FY 2007 to being the architectural design for the new elementary school, which is scheduled to open in August 2009. See *id.*

At the middle school level, MCPS states that additional middle school capacity is needed in Clarksburg. See *id.* An FY 2007 appropriation has been approved for a feasibility study for the replacement of Neelsville Middle School, which is shared between the Clarksburg and Watkins Mill clusters. When a new facility is built to replace Neelsville Middle School, MCPS indicates that the current Neelsville facility will completely serve students from the Clarksburg cluster. See *id.* At the high school level, the new Clarksburg High School opened last month, and is expected to remain under or at capacity through 2015. See *id.* at 4-19, 4-21; Tr. at 89.

⁷ The Hearing Examiner takes official notice of the MCPS CIP Report.

In light of the intensive school-building activity under way in Clarksburg, the evidence suggests that under both the Growth Policy definition and the MCPS definition, capacity in the relevant schools would be adequate to accommodate the proposed development.

I. Community Participation

Early in the evolution of this case, the Clarksburg Civic Association submitted a letter into the record objecting to the proposed alignment of Observation Drive on grounds that all four proposed lanes should be on the subject site, so as to avoid affecting the King residence. See Ex. 19. The Civic Association argued that the proposed alignment did not conform to the Master Plan's recommendations. See *id.* The Applicant's attorney reported during the hearing that the Kings have sold their property to the Applicant, although the Kings will remain in residence until construction begins. A representative of the Clarksburg Civic Association testified at the hearing that the Association no longer objects to the proposed alignment of Observation Drive, and this was confirmed in writing after the hearing. See Ex. 66. The Kings, also, have withdrawn their earlier objection to the rezoning. See Exs. 29 and 66.

IV. SUMMARY OF HEARING

A. Applicant's Case in Chief

1. Phil Perrine, land planner. Tr. at 22–77, 82–101.

Mr. Perrine was designated an expert in land planning. He noted the current R-200 zoning of the subject property, and its location in the Transit Corridor District of the Clarksburg planning area, as established in the Master Plan. Mr. Perrine explained that the Transit Corridor District is centered about the area from Observation Drive to I-270; it runs from I-270 on the west, past MD Rte. 355 to a tributary that roughly parallels MD 355. It runs from Rte. 121 on the north to proposed New Cut Road to the south.

Mr. Perrine described the zoning pattern in the area and then described the surrounding uses in more detail. He noted that directly across the future Observation Drive right-of-

way from the subject site, to the east, are two houses that the Applicant has purchased. Beyond those are about 12 single-family homes on scattered, individual parcels, in a rural residential land use pattern. There is also a church along MD 355 just north of Shawnee Lane, which abuts the subject site to the south and intersects MD 355. The area between the site and MD 355 also has a great deal of undeveloped, forested land. Northeast of the site there are some additional residences along MD 355, and then the Gateway Commons property. Construction is also underway, Mr. Perrine added, on an extension of Stringtown Road, which crosses over MD 355, to connect with Gateway Center Drive and with I-270. The Stringtown Road extension is intended to be the new way to reach I-270.

Mr. Perrine observed that directly north and west of the subject site are employment uses along Gateway Center Drive in mostly two-story, long, low buildings, as well as a post office and a fire station. Farther south is the Comsat development, which is now a commercial compound, but is planned for a more extensive, mixed-use development. Mr. Perrine stated that the Master Plan recommends the Comsat property for about four million square feet of office space, plus residential and a transit stop. He noted that the Master Plan calls for three transit stops in the Transit Corridor District, all along the path of the future Observation Drive.

Addressing the large Board of Education property that extends from the moving company site southeast of the subject site to MD 355, Mr. Perrine noted that there is a high school on that parcel, and a middle school on an adjacent parcel to the south.

Mr. Perrine agreed with Technical Staff's recommendation for the appropriate the surrounding area to consider in this case, bounded roughly by I-1212, I-270, MD 355 and New Cut Road. This was a departure from the surrounding area described in his written land use report, which was co-extensive with the larger Transit Corridor Area from the Master Plan. Mr. Perrine now believes that establishing MD 355 as the eastern boundary of the surrounding area captures the relevant area better. Tr. at 32-33.

Mr. Perrine noted that the Master Plan recommends the subject property, on the Land Use and Transportation Master Plan, for a density of 9 to 11 dwelling units per acre. It recommends the property directly to the east for 2 to 4 dwelling units per acre, and the property to the north for 7 to 9 units per acre. South of Shawnee Lane, Mr. Perrine stated, the Master Plan recommends the Eastside property for 9 to 11 units per acre, and the moving company property for 7 to 9 units per acre. The Master Plan also indicates the location of Observation Drive, with three transit stops along it, one adjacent to the subject site, one on the Comsat property to the southeast, and one in the center of Clarksburg, near the historic district. Mr. Perrine specified that the Master Plan depicts a preferred alignment for Observation Drive. He also noted that the section of Observation Drive to be built by the Applicant would have to connect with the existing Observation Drive on the Gateway Commons property.

Describing the subject site, Mr. Perrin noted that the property is vacant and wooded. There is a small portion of stream valley buffer in the northwest corner of the property, which is associated with a stream that is off the property, about 40 feet to the north. He noted that the topography rises up about 40 feet from Shawnee Lane on the south, and has a high point in the middle of the site, near proposed Observation Drive. It then slopes back down towards the stream north of the property.

Mr. Perrine described the proposed development, which would have 408 units, at a density of 11 dwelling units per acre, consisting of 21 single-family detached homes (about five percent), 41 townhouses (about 35 percent), 62 two-over-two units (about 15 percent), and 184 multi-family units (about 45 percent). Tr. at 38. He noted that the 408 units would include 12.5 percent MPDUs, or 51 units. The multi-family units would be in a single building, but the other housing types would be scattered throughout the project, with a mixture of unit types in each area and on each street, consistent with the New Urbanism development concept espoused in the Master Plan and, in particular, preferred by the community representatives who were involved in planning the development. Tr. at 43. Mr. Perrine explained that principles of New Urbanism

suggest that it makes for a more interesting and more livable community to have a finer-grained mix of uses, with different housing types mixed within each block, “like a town that had built up over time.” Tr. at 43. Unlike Euclidean zones, the PD Zone allows for a mixture of housing types, and this plan simply provides a more intimate mix.

Mr. Perrine observed that in its deliberations on the original plan for this site, which had each type of housing in its own area of the site, the Planning Board focused a great deal on the design of the site. The Board found the original design too “cookie-cutter,” and challenged the Applicant to devise a plan that would respond more fully to the design elements of the PD Zone. Mr. Perrine explained that the extensive “Binding Design Principles” evolved from discussions between the Board and its staff during those original deliberations. They were intended to provide a qualitative description that would be a stronger link between the Development Plan and the eventual site plan to be reviewed by the Planning Board, assuming that the rezoning is granted.

Mr. Perrine indicated that the homes are to be organized along a grid system of streets. The main street, Street A, would intersect Shawnee Lane and run parallel with Observation Drive. Tr. at 39. Several side streets would cross Street A, creating the grid system. The development would have a main entrance on Observation Drive, and a second entrance on Shawnee Lane.

Mr. Perrine testified that the multi-family building is to be located at the southwest corner of Shawnee Lane and Observation Drive. This location was chosen to place a higher concentration of residents close to the future transit stop, which is proposed for the northwest corner of Shawnee Lane and Observation Drive. All of the homes in the development would be within a quarter-mile of the transit stop, but this corner location for the multi-family building would place the largest population concentration as close as possible to the station. Tr. at 40. The property directly across Shawnee Lane from the multi-family buildings is currently occupied by the Board of Education bus depot. It is recommended, however, for residential development at the

same density as the subject site – 9 to 11 acres. Thus, if it is developed in the future, the recommended zoning would allow a compatible form of development. Tr. at 41.

Mr. Perrine described the Master Plan as the underpinning for the concept this Development Plan has followed, and opined that the proposed development would be consistent with it. He noted that the plan states that its objectives are best implemented through zones that allow the developer more flexibility in layout, and provide for more rigorous design review by the Planning Board and/or the County Council. Mr. Perrine opined that the density proposed in this case would be high enough to support transit. He based this conclusion on page 54 of the Master Plan, which states that the density of residential uses must be compatible with neighboring subdivisions on MD 355, yet high enough to support transit. PD-11, the density sought here, is the highest density recommended for this area in the Master Plan, so Mr. Perrine concludes that PD-11 is, presumably, sufficiently supportive of transit. Tr. at 52. Mr. Perrine noted that the Master Plan's Land Use Plan recommends 9 to 11 units per acre for the subject property, but the Zoning Map recommends 7 to 11 units per acre; Mr. Perrine considers 9 to 11 to be more appropriate.

Mr. Perrine opined that the proposed development would satisfy the purpose and intent of the PD Zone, and summarized the detailed rationale presented in his written report. He noted the grid roadway system, and observed that the main recreation area, in the middle of site, with a pool, club house, and amphitheater green, would be on the highest point of the site, clearly observable from the Observation Drive entrance. In addition, he noted, each of the smaller neighborhoods is located around a small open area, and each one has a variety of housing types. Mr. Perrine also made note of the forested buffer to be retained between the proposed development and adjacent industrial uses to the west and north. The community would have private and public roads, with a 20-foot travel way as required by the Fire Marshal, and would have some space for on-street parking, as one would normally find in a community like this. Tr. at 55.

Mr. Perrine noted that in addition to Shawnee Lane and Observation Drive, the three main roads in the development would be mostly public – Road A, Road B and most of Road C. Tr.

at 56. He also addressed the extent to which the final site plan would require a waiver of the Subdivision Regulations requirement that single-family homes on individual lots must have frontage on a public road. Mr. Perrine noted that the lot lines along Observation Drive would extend all the way to the street, giving them public road frontage. In addition, he stated that townhouses that are part of a condominium regime, which is not uncommon, do not require frontage on a public road because they are not on individual lots. He also testified that it has been routine practice, over many years, to permit townhouses to front on a private street, even if they are on individual lots. Tr. at 57. Mr. Perrine stated that this has been done as a policy matter, without a formal waiver. *Id.*

Mr. Perrine noted that traditional townhouses are scattered throughout the development, in several locations at each end of a row of two-over-two units. The townhouses are lower in height, he explained, so putting them at the ends of two-over-two rows would have the effect of stepping down the height of the building, and its sense of mass. Mr. Perrine noted that only townhouse units are shown along Observation Drive (except for the multi-family building). The taller two-over-two units are not shown on Observation Drive, to avoid exaggerating the significant change in grade (the grade of Observation Drive is expected to be 10 to 12 feet lower than that of the development area).

Mr. Perrine observed that the extensive roadway system would be paralleled by an extensive sidewalk system connecting the residences to the main recreation area and the smaller open space areas, and to a potential path in the wooded buffer area.

Turning to other requirements of the PD Zone, Mr. Perrine noted that all of the units on Observation Drive would be set back from the closest residential property well beyond the 100-foot requirement, with the intervening right-of-way for Observation Drive. Mr. Perrine referred to the building height provisions of the PD Zone, which address only multi-family buildings, and are framed in terms of stories, rather than feet. He explained that to respond to Technical Staff concerns about building height, the Applicant proposes binding limitations on the height of buildings measured from the first floor up, while allowing the total height from the grade of the road to vary

depending on topographic conditions on various parts of the site. Tr. at 64-66. He noted that this flexibility would be most needed along Observation Drive, where the difference in grade is 10 to 12 feet. The multi-family buildings also would not exceed the four-story limitation under the PD Zone.

Mr. Perrine testified that no retail uses are proposed for this project, for several reasons. First, the transit stop has not yet been built, so the timing would not be right for retail. Second, any retail related to the transit stop should be on the same side of Observation Drive as the station, particularly in light of the 10-12 foot grade difference between Observation Drive and the subject site. Finally, the size of the proposed development is simply too small to support retail on its own. Tr. at 84.

With regard to environmental matters, Mr. Perrine stated that an NRI/FSD has been approved for this site by MNCPPC; a preliminary forest conservation plan has been submitted; there are no rare, threatened or endangered species on the site; the County's forest conservation requirements would be met through on-site forest retention and off-site reforestation; and the proposed development would not disturb any wetlands. Tr. at 85-86.

Mr. Perrine described street trees planned along the whole street system, between the sidewalks and the roads, and additional plantings around some of the play areas. He noted that on public roads, the plantings would be within the right-of-way. He also described city-street style lighting along the whole street system. Mr. Perrine argued that parking would be adequate for each of the unit types, as well as for the clubhouse, the swimming pool and visitors. The Zoning Ordinance requires 1180 off-street spaces, including garages, and the Development Plan provides for 1,256 parking spaces.

Mr. Perrine noted the MCPS estimates for the number of public school students the proposed development would generate. In response to the Hearing Examiner's question as to whether the new Clarksburg/Damascus high school that was scheduled to open in August 2006 had in fact, opened, Mr. Perrine stated that he has been to the school this year and it is operating. Tr. at

89. He also noted that the Planning Board has found capacity adequate for the current year in all public schools.

Finally, Mr. Perrine opined that the proposed development would be in the public interest. Tr. at 92.

In response to questioning by the People's Counsel, Mr. Perrine elaborated on the basis for his conclusion that the proposed development would be compatible with existing land uses in the surrounding area. He observed that across the proposed Observation Drive right-of-way, the two residences close to the future roadway are now owned by the Applicant, and the land is to be put to other uses. Farther east is forest area, and the nearest residence is close to 400 feet from the subject property, separated from it by the future Observation Drive and, in time, the transit line proposed in the Master Plan. Tr. at 94, 98. Mr. Perrine observed that there are 10 to 12 residences in that area, separated from the subject site by a heavily wooded area and the 150-foot right-of-way for proposed Observation Drive. Mr. Perrine maintained that any future development in that area would be limited by the buffer required for the stream that runs past the northwest corner of the subject property and through the forested area to the north. The unbuildable 135-foot to 150-foot stream buffer would be between the subject site and any new homes on the north/east side of Observation Drive. Tr. at 100-101. Mr. Perrine added that per the binding elements, streetscape along Observation Drive would follow the Master Plan's recommendations for Clarksburg streetscape, which includes street trees. Tr. at 99.

To the west [and south], Mr. Perrine observed, is Gateway center, a development of low-scale office buildings that back onto the subject site. That development would be separated from the subject site by an existing forested buffer to be retained, which runs from about 110 feet deep to almost 300 feet deep.

To the south, Mr. Perrine noted, is the Eastside property, which has been approved for development with a plan with densities and housing types that are similar to those proposed here. The bus depot to the east has a building that is about 24 feet high, with most of the parking

in the rear. Mr. Perrine stated that the area of activity on that property is set back about 100 to 125 feet from Shawnee Lane, and there are some intervening pine trees that provide some screening.

Mr. Perrine noted that the large Board of Education property on the east side of Shawnee Lane has a fair amount of unbuildable area due to a stream, wetlands, some slopes and forested areas that are to be retained.

2. Shane Pollin, Applicant's representative. Tr. at 49-50; 156-162.

Mr. Pollin is Director of Development for the Applicant, Ralph J. Duffie, Inc. His job is to get projects through the approval process. Mr. Pollin noted that the Applicant purchased the subject property in 1992, and participated in the Master Plan process. He noted that the plan for this site has evolved significantly, particularly with more recent changes that were designed to bring it into line with the principles of New Urbanism. As noted by other witnesses, the original plan placed each type of housing in its own pod. Tr. at 157-58. At the Planning Board hearing on the original plan, the development team learned that that was not the community's vision for this site, and it was not necessarily what the PD Zone purpose clause envisioned. Mr. Pollin testified that following the Planning Board's deliberations on the original plan, the development team started reading about New Urbanism, to come up with a set of principles against which the site plan could be evaluated. Tr. at 50. Mr. Pollin and some of the interested Clarksburg citizens traveled to an annual meeting of the Congress of New Urbanism and attended quite a few seminars. Tr. at 158. Mr. Pollin feels that his team has created a design that will create a visually distinctive community, and one they can be proud of.

Mr. Pollin stated that the Applicant considered adding retail on several occasions. The Applicant owns shopping centers, and Mr. Pollin has personal experience in negotiating with retailers. He contends that retailers need traffic to survive, and the development proposed here simply does not have enough mass. Traffic needs to be either pedestrian, because of proximity to transit, or lots of cars driving by. This site would have neither, at this point. Moreover, the most logical location for retail would be in the multi-family building, but because of the grade differential,

that would not be convenient. On the whole, Mr. Pollin reported, the Applicant decided that it would not be prudent to include retail on this site. Tr. at 160.

Mr. Pollin represented that if the proposed development goes forward, a homeowner's association will be created to maintain common areas and the recreational facility, and covenants will be executed at the time of site plan. Finally, Mr. Pollin confirmed that the Applicant agrees to all of the conditions recommended by the Planning Board, and to the written binding elements.

3. John Stovall, architect. Tr. at 108-126.

Mr. Stovall was designated an expert in architecture. He described the five building types proposed for the subject site: the clubhouse, detached homes, townhouses, two-over-two units [and multi-family units]. He notes that the detached homes are to be two stores in height, the townhouses three stories, and the two-over-two buildings four stories – two stories for each unit, with two units sitting one on top of the other. Mr. Stovall carefully described the features of the two-over-two units, and why he believes they qualify as single-family attached units under the Zoning Ordinance. Tr. at 113-116.

Mr. Stovall described the County's definition of "single-family attached unit" thus: in a building with other residential units, adjacent to and attached to another residential dwelling unit; having its own, individual entrance; and having its own green space immediately associated with it. He noted that the two-over-two units shown on the Development Plan would be in residential buildings, and would be attached to other residential units. Using an enlarged drawing of a block of four two-over-two units (Ex. 48(e)), Mr. Stovall pointed out that in that configuration, the lower units would have their entrances at either end of the block of four units, and the upper units would have entrances in the middle of the block of four. The ground-level entrances to the upper units would lead to staircases, with internal dwelling entrances at the top of the stairs. The green space for each unit would be adjacent to the walkway leading to its exterior door. The enlargement depicts two options for "finishing" the green space for each two-over-two unit – an actual green area

adjacent to the sidewalk, or a patio area extending from the sidewalk. Tr. at 115. Mr. Stovall indicated that each two-over-two unit would also have a garage underneath the unit, and a driveway with space to park an additional vehicle.

Mr. Stovall described the proposed building heights as having two components: (i) a structure height, extending from the first floor above grade to the mid-height of the roof; and (ii) from the first floor above grade down to the centerline of the street. The former would remain constant for all buildings of each type, while the latter would vary depending on the location. Mr. Stovall testified that typically, the height from first floor above grade to the centerline of the street would be about two to three feet, but in some places on the site (especially along Observation Drive) that number would be larger, up to a maximum of 12 feet.

Mr. Stovall explained that Observation Drive will be required to sit at a very low grade, cutting through the existing terrain, because it will be adjacent to the proposed transit stop, which requires a very low grade. Tr. at 117-118. He noted that the original plan showed some two-over-two units along Observation Drive, but in the current plan there are only townhouses in that location, to minimize the height of buildings that one would see driving down Observation Drive. Mr. Stovall explained that the locations of the two-over-two units were chosen with an eye to the topography, to avoid placing the tallest structures on high points of the property. In addition, each block of two-over-two units is flanked by a townhouse at each end, to step down the height of the combined structure. Mr. Stovall explained that where possible, the heights step up from detached to townhouse to two-over-two, to create "an opportunity for change in character that's important with the design feeling of this plan." Tr. at 118.

Describing the multi-family building, Mr. Stovall confirmed that it is shown in the corner of the site closest to the proposed transit stop location, to take best advantage of that proximity. He stated that the building would have four levels of dwelling units surrounding an interior parking structure that would be hidden from view. From a community standpoint, Mr. Stovall considers it important to create a parking structure to avoid having surface parking three times the

size of the building. He pointed out that to minimize the scale and mass of the multi-family building, it would be broken down into “modules”. Tr. at 120.

By way of explaining why buildings today tend to be taller than in the past, Mr. Stovall explained that with wood construction, in the past, a building needed only about eight inches between floors, for 2” x 8” joists and plywood, which spanned bearing walls that were 12 feet apart. Today, bearing walls are spaced 20 feet or more apart, and the space between floors has increased to as much as 24 inches to accommodate more elaborate truss joists. In addition, homes are now being built with nine-foot ceilings, instead of eight-foot, and steeply sloped, gable roofs are considered “very important to the character of the community of a successful design.” Tr. at 122.

Turning to the Binding Design Principles, Mr. Stovall stated that numbers 16 through 25 apply to the architecture, addressing scale, materials, roof designs, lot widths and building heights. He described them as tenets of New Urbanism that provide the elements needed to be successful with that design.

Finally, Mr. Stovall opined that the units proposed for the subject site would be compatible with the development recommended for the surrounding area in the Master Plan. Tr. at 125.

4. Stephen G. Petersen, traffic planner. Tr. at 126-36; 150-54.

Mr. Petersen was designated an expert in transportation planning and traffic engineering. His firm prepared an original traffic study in October 2004, which is no longer relevant. They prepared a new report in September 2005 that is still relevant, as well as an update in June 2006. The two reports, together, support Mr. Petersen’s conclusion that adequate transportation facilities are available to support this project.

Mr. Petersen described the study area established for this case by Technical Staff, which was defined by Stringtown Road extended (now under construction), MD 355, Shawnee Lane and Gateway Center Drive. The four intersections he was asked to analyze are Clarksburg Road (Rte. 121) and Gateway Center Drive; Gateway Center Drive and Shawnee Lane; Shawnee Lane

and MD 355; and MD 355 at Stringtown Road. Tr. at 130. Following the LATR guidelines, Mr. Petersen found that with one roadway improvement at one of the intersections, all of the intersections he studied would have adequate capacity with existing, background and site-generated traffic.

Mr. Petersen stated that he agrees with the four transportation-related conditions that were recommended by Technical Staff and the Planning Board, except that he has identified a typographical error in condition number 3, which would require the Applicant to provide exclusive, dual northbound left turn lanes at the intersection of Stringtown Road Extended and Gateway Center Drive. The Planning Board resolution states that this is to be accomplished by “redesigning” one northbound through lane as an exclusive left turn lane. Mr. Petersen contends, however, that the word was intended to be “redesignating.” Tr. at 132-33. In fact, Applicant’s counsel stated in a letter submitted after the hearing that the source of the error was language that he had prepared, which mistakenly used the word “redesigning,” and it carried forward into the Planning Board’s recommendation. See Ex. 63.

Mr. Petersen noted that “redesignating” implies relatively modest costs to make modifications to the traffic signal, potentially the traffic signal heads, some of the signage, and the loops in the pavement. “Redesigning,” he feels, implies changing and reconstructing something that exists. Mr. Petersen reported that he contacted a member of Transportation Planning Staff, who agreed that the correct word would be “redesignate.” Tr. at 133. Applicant’s counsel has requested that the Planning Board issue a corrected opinion, but no such correction is reflected in the record. The record does reflect, however, that Transportation Planning Staff’s Memorandum attached to the Staff Report uses the word “re-designate”, not “redesign.” See Transportation Planning Memo at 2.

Noting that the Applicant proposes to construct Observation Drive only to the northernmost entrance to the subject site, Mr. Petersen opined that if no additional construction is ever done on Observation Drive in the future, access to the site will still be adequate. His analysis

did not depend on the extension of Observation Drive to Stringtown Road, nor did it depend on the widening of Observation Drive to two lanes in each direction. Tr. at 151.

In response to a question from the Hearing Examiner, Mr. Petersen acknowledged that his traffic studies take into account both existing traffic and “existing adjusted” traffic. The adjusted figures, he explained, take into account new roads that are being constructed in the area, including the extension of Stringtown Road and additional roads east of MD 355. The completion of those roads will divert traffic, particularly from MD 355, so certain adjustments are necessary to reflect that. Mr. Petersen noted that the same adjustments were made in the traffic analysis for the Eastside project, and that this methodology was approved by Technical Staff.

In response to the Hearing Examiner’s interest in having a point of comparison for the 150-foot right-of-way planned for Observation Drive, Mr. Petersen noted that Georgia Avenue at Randolph Road has six lanes, with a right-of-way of about 120 feet. He noted that the right-of-way proposed for Observation Drive along the subject site includes a median that would be 44 feet along part of its length and 60 feet along the rest, which is enough space for the entire right-of-way for a primary residential street. It also has enough space for 26 feet of roadways on each side, plus very generous sidewalks and greenway panels on each side. That, Mr. Petersen pointed out, makes for a very wide right-of-way. Tr. at 154.

5. David O’Bryan, civil engineer. Tr. at 136-150.

Mr. O’Bryan was designated an expert in civil engineering. He confirmed that the high point on the site runs from the southeast corner to the middle of the site and then to the western property line. That high point splits the site into two drainage areas, one draining towards Shawnee Lane and the other towards Observation Drive. He noted that the stream near the northwest corner of the site receives the major portion of the drainage from the site.

Mr. O’Bryan also confirmed that the site is in a special protection area, which is an area designated by the County Council to provide a higher level of water quality protection for certain watersheds. He noted that there are wetlands near the stream that runs close to the

northeast corner of the site, but that area would not be disturbed in connection with the proposed development. The requirements of the special protection area would obligate the Applicant to monitor streams and wells throughout the area prior to and after development, and required it to submit a more detailed stormwater management concept called a "preliminary water quality plan," to be followed by a final water quality plan at the time of subdivision review.

Mr. O'Bryan stated that the Applicant has submitted a preliminary water quality plan to DPS and Technical Staff for review. The special protection area requirements obligate a developer to break up the drainage areas into areas of approximately one acre, and treat every acre independently. On the subject site, with the proposed density, this would result in a series of small water quality treatment areas scattered throughout the site (Mr. O'Bryan estimated about 30). The majority of these facilities would be located underground, because the type of development planned for the subject site does not lend itself to big open spaces between the units. Tr. at 142. These filtration devices would lead to larger water quantity control storage units, which would discharge into the nearby stream. This concept, Mr. O'Bryan pointed out, has been approved preliminarily by DPS.

Mr. O'Bryan acknowledged that Environmental Planning Staff at the MNCPPC had raised a concern about the Applicant's plan to place part of the stormwater management system off-site, on the other side of the proposed right-of-way for Observation Drive. Mr. O'Bryan noted that a stream valley runs almost parallel to the Observation Drive right-of-way, angling slightly away east of Parcel N997, the King parcel. The stream runs about 100 feet northeast of the Observation Drive right-of-way. Mr. O'Bryan explained that the King property [which the Applicant now owns] is the low area for the portion of the subject site that drains toward Observation Drive. He explained that stormwater management for Observation Drive could not be provided on the subject site because of the grade difference – they couldn't get the water to go uphill into the site. Stormwater management facilities normally are not permitted in a road right-of-way, so the Applicant proposed to put them (three sand filters and a dry pond) on the open ground occupied by the King property.

Mr. O'Bryan stated that Environmental Planning Staff preferred to see stormwater management facilities as far away from the stream as possible, so his team met with Staff and worked on conditions that they would find acceptable. Mr. O'Bryan indicated that these conditions are part of the Planning Board's recommendations, and that the Applicant agrees to be bound by them.

Mr. O'Bryan testified that the subject site has the water and sewer categories necessary to support extension of public water and sewer to the site, and he expects that they will be extended. He noted that the sewer extension that was put in place for the Eastside property to the east was sized to accommodate an extension from that tract to the subject site. Tr. at 147-48. Mr. O'Bryan stated that other utilities, e.g. electric, telephone and cable, also are available at the site. Finally, Mr. O'Bryan opined that from an engineering perspective, approval of the present application is in the public interest. He noted, in particular, that the property would provide the necessary right-of-way for a transit stop, and the Applicant has purchased additional land to hold in reserve for the County to build parking facilities for the station.

In response to a question from the Hearing Examiner, Mr. O'Bryan acknowledged that although the development proposed here would not affect the nearby wetlands, the final construction of Observation Drive would. Specifically, he stated that the Applicant would be responsible for building its half of Observation Drive only to the last entrance to the site, not all the way to the property line. He explained that the County would be responsible for connecting the portion of Observation Drive along this property to portion being built as part of Gateway Commons, and there is no way to make that connection without crossing the stream. He stated that it would be the County's responsibility, therefore, to obtain the necessary permits from the Army Corps of Engineers. Tr. at 149-50.

B. Community Participation

1. Kim Shiley, Clarksburg Civic Association. Tr. at 78-80.

Ms. Shiley is a resident of the Clarksburg Town Center, a member of the planning committee for the Clarksburg Civic Association, and Vice President and Treasurer of the Clarksburg

Town Center Advisory Committee, Inc. She testified that she is very familiar with the Master Plan, and has spent the last two years of her life dedicated to making sure that the vision of Clarksburg is achieved. Ms. Shiley stated that the citizens of her community recognized, back in 1994 (when the Master Plan was being prepared), that Clarksburg needed to have special characteristics, and they did their very best to get those characteristics into the plan. They had to do with the look, feel and sense of place. One of the elements was having a mix of units within neighborhoods, rather than separate pods for each housing type. Other elements were to have a grid pattern for streets, and a sense of place in each community, with a neighborhood center. Ms. Shiley noted that while the community did not use the term “New Urbanism” in 1994, the principles of New Urbanism define the type of community they were looking for.

Ms. Shiley stated that the development proposed in this case honors the community’s and the Master Plan’s vision for Clarksburg, and is one of the best she has seen in accomplishing that. Ms. Shiley does not seem to be enamored of the PD Zone, as a general matter – she stated that the County has decided to implement PDs and MXPDs in rezonings, so “we’re locked into using that type of law to create . . . a community that is supposed to be pedestrian oriented with principles of new urbanism as we now know it.” Tr. at 79. Despite the limitations she perceives in the PD Zone, Ms. Shiley clearly supports approval of the proposed rezoning and Development Plan.

Ms. Shiley also clarified that while the Clarksburg Citizen’s Association objected to the proposed alignment for Observation Drive, a year or so ago, because it would require removing the long-time home of the King family, that is no longer an issue because the Kings have agreed to sell their property to the Applicant.

C. People’s Counsel

Martin Klauber, the People’s Counsel for Montgomery County, testified that the Planning Board’s two-hour deliberations on the earlier version of this Development Plan “broke new ground in how they interpreted the purpose clause of the PD Zone.” Tr. at 44-45. For the first time

in 20 years, the Planning Board delved into the design elements of the purpose clause in analyzing a development plan, which resulted in the current plan. Mr. Klauber noted that the Planning Board did not like the original design for this site, and that the purpose clause of the PD Zone deals with design. The Board members spent over two hours discussing what the design elements of the purpose clause mean.

Mr. Klauber described the development of this proposal as a collaborative effort between the Applicant and community, with a realization of what the PD Zone is really about. He stated an intention to do his best to make sure that this case becomes a precedent for what is expected in other PD Zone developments. Mr. Klauber recommended approval of the requested rezoning.

V. ZONING ISSUES

Zoning involves two basic types of classifications: Euclidean zones and floating zones. The term “Euclidean” zoning arose from the seminal United States Supreme Court case upholding the land use authority of local governments, *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926). Euclidean zoning divides the territory of a local jurisdiction into zoning districts with set boundaries and specific regulations governing aspects of land development such as permitted uses, lot sizes, setbacks, and building height. In the State of Maryland, a property owner seeking to reclassify his or her property from one Euclidean zone to another bears a heavy burden to prove either a change in circumstances or a mistake in the original zoning. See *Stratakis v. Beauchamp*, 268 Md. 643, 652-53 (1973).

A floating zone is a more flexible device that allows a legislative body to establish a district for a particular type of use, with land use regulations specific to that use, without attaching that district to particular pieces of property. Individual property owners may seek to have property reclassified to a floating zone by demonstrating that the proposed location is appropriate for the zone, *i.e.*, it satisfies the purpose clause and requirements for the zone, the development would be compatible with the surrounding area, and it would serve the public interest.

PD (Planned Development) zones are a special variety of floating zone with performance specifications integrated into the requirements of the zone. These zones allow considerable design flexibility if the performance specifications are satisfied. The applicant is not bound to rigid design specifications, but may propose site-tailored specifications, within the parameters established for the zone, for elements such as setbacks, building heights and types of buildings. These specifications are set forth on a development plan to facilitate appropriate zoning oversight by the District Council. Pursuant to Code §59-D-1.11, development under the PD Zone is permitted only in accordance with a development plan that is approved by the District Council when the property is reclassified to the PD Zone. Once it is approved, the development plan provides the design specifications for the site, much as the Zoning Ordinance provides design specifications for more rigidly applied zones. Accordingly, the evaluation of zoning issues must begin with the development plan and proceed to the requirements of the zone itself.

A. The Development Plan

Before approving a development plan, the District Council must make five specific findings set forth in Code § 59-D-1.61. These findings relate to consistency with the master plan and the requirements of the zone, compatibility with surrounding development, circulation and access, preservation of natural features, and perpetual maintenance of common areas. The required findings are set forth below in the order in which they appear in the Zoning Code, together with the grounds for the Hearing Examiner's conclusion that the evidence in this case supports the required findings.

- (a) ***That the zone applied for is in substantial compliance with the use and density indicated by the master plan or sector plan, and that it does not conflict with the general plan, the county capital improvements program or other applicable county plans and policies.***

The first sentence of the purpose clause for the PD Zone establishes consistency with the master plan as an important factor in applying the zone:

It is the purpose of this zone to implement the general plan for the Maryland-Washington Regional district and the area master plans by permitting unified development consistent with densities proposed by master plans.

The density category indicated on the applicable master plan has special status in a PD Zone. If the District Council desires to grant reclassification to a PD Zone with a density category *higher* than that indicated on the applicable master plan, such action requires the affirmative vote of at least six members of the District Council. Code §59-D-1.62. In this case, the Applicants seek a density category that was recommended in the Master Plan, so a supermajority vote is not necessary.

In the present case, both the Planning Board and Technical Staff found that the proposed development conforms to the recommendations of the *1994 Clarksburg Master Plan*. The Hearing Examiner agrees.

The Development Plan would contribute to the Master Plan's vision of Clarksburg as a transit-and-pedestrian oriented community, surrounded by open space, by creating a pedestrian-friendly residential community, with a variety of housing types within each block, interconnected sidewalks, short block lengths, and neighborhoods centered around recreation areas and green space. This community would be in close proximity to a future transit stop, and would add to the critical mass necessary to support transit. The Applicant would further contribute to the Master Plan's vision by holding the Cawood Property in reservation for a period of five years from Preliminary Plan approval, giving the County and other government agencies time to decide whether and how to use the property for transit-related parking. This commitment is stated on the Development Plan.

The proposed development would contribute to all but one of the Master Plan objectives listed by Technical Staff, as cited on pages 34-35. It would be compatible in terms of use, density and buffering with the low-density residential uses to the east, which would support

the continuation of the present residential character along MD 355. It would help increase carrying capacity for north/south traffic, while preserving the residential character of MD 355, by constructing part of the Master Plan-recommended alignment for Observation Drive. It would promote the continuation of employment uses along I-270 by increasing the local residential population, some of whom might become employees or customers for business along I-270. The proposed development would provide housing in an area that is designated for residential use and is along the transitway and near significant employment uses, such as the Gateway Center Drive industrial park and the Comcast complex. The development would improve east-west road conditions by contributing needed right-of-way to Shawnee Lane. Finally, it would contribute to the creation of an open space system in the planning area by retaining a large forested area, and by creating green areas of various sizes within the subject site.

The proposed development would also be consistent with the site-specific recommendations on the Master Plan's Land use and Transportation Plan and its Zoning Plan, both of which recommend residential use of the site at a maximum density of 11 dwelling units per acre.

Based on the overwhelming weight of the evidence, the Hearing Examiner finds that the proposed development would be in substantial compliance with the use, density and other recommendations of the Master Plan.

The evidence supports the conclusion that the Development Plan does not conflict with any other county plans or policies, or the capital improvement program. It would further county housing policy by creating diverse housing options, including affordable housing, and (as discussed in Part III.H. above) would not be inconsistent with the Growth Policy.

- (b) ***That the proposed development would comply with the purposes, standards, and regulations of the zone as set forth in article 59-C, would provide for the maximum safety, convenience, and amenity of the residents of the development and would be compatible with adjacent development.***

1. Purposes of the Zone

The purpose clause for the PD Zone, found in Code §59-C-7.11, is set forth in full below, with relevant analysis and conclusions for each paragraph following.

It is the purpose of this zone to implement the general plan for the Maryland-Washington Regional District and the area master plans by permitting unified development consistent with densities proposed by master plans. It is intended that this zone provide a means of regulating development which can achieve flexibility of design, the integration of mutually compatible uses and optimum land planning with greater efficiency, convenience and amenity than the procedures and regulations under which it is permitted as a right under conventional zoning categories. In so doing, it is intended that the zoning category be utilized to implement the general plan, area master plans and other pertinent county policies in a manner and to a degree more closely compatible with said county plans and policies than may be possible under other zoning categories.

It is further the purpose of this zone that development be so designed and constructed as to facilitate and encourage a maximum of social and community interaction and activity among those who live and work within an area and to encourage the creation of a distinctive visual character and identity for each development. It is intended that development in this zone produce a balance and coordinated mixture of residential and convenience commercial uses, as well as other commercial and industrial uses shown on the area master plan, and related public and private facilities.

It is furthermore the purpose of this zone to provide and encourage a broad range of housing types, comprising owner and rental occupancy units, and one-family, multiple-family and other structural types.

Additionally, it is the purpose of this zone to preserve and take the greatest possible aesthetic advantage of trees and, in order to do so, minimize the amount of grading necessary for construction of a development.

It is further the purpose of this zone to encourage and provide for open space not only for use as setbacks and yards surrounding structures and related walkways, but also conveniently located with respect to points of residential and commercial concentration so as to function for the general benefit of the community and public at large as places for relaxation, recreation and social activity; and, furthermore, open space should be so situated as part of the plan and design of each development as to achieve the physical and aesthetic integration of the uses and activities within each development.

It is also the purpose of this zone to encourage and provide for the development of comprehensive, pedestrian circulation networks, separated from vehicular roadways, which constitute a system of linkages among residential areas, open spaces, recreational areas, commercial

and employment areas and public facilities, and thereby minimize reliance upon the automobile as a means of transportation.

Since many of the purposes of the zone can best be realized with developments of a large scale in terms of area of land and numbers of dwelling units which offer opportunities for a wider range of related residential and nonresidential uses, it is therefore the purpose of this zone to encourage development on such a scale.

It is further the purpose of this zone to achieve a maximum of safety, convenience and amenity for both the residents of each development and the residents of neighboring areas, and, furthermore, to assure compatibility and coordination of each development with existing and proposed surrounding land uses.

This zone is in the nature of a special exception, and shall be approved or disapproved upon findings that the application is or is not proper for the comprehensive and systematic development of the county, is or is not capable of accomplishing the purposes of this zone and is or is not in substantial compliance with the duly approved and adopted general plan and master plans. In order to enable the council to evaluate the accomplishment of the purposes set forth herein, a special set of plans is required for each planned development, and the district council and the planning board are empowered to approve such plans if they find them to be capable of accomplishing the above purposes and in compliance with the requirements of this zone.

1st paragraph: Master Plan implementation. For the reasons stated under (a) above, the proposed development would be in substantial compliance with the recommendations and objectives of the Master Plan, and would implement those objectives more fully than would be possible under other zoning classifications. The intermingled mix of unit types and setbacks, with shared private streets and alleyways, could not be achieved under a conventional zoning category. The evidence also supports a finding that the proposed development would integrate mutually compatible uses and provide better circulation, access, amenities and environmental protection than could be achieved under conventional zoning.

Second paragraph: social and community interaction, distinctive visual character, balanced mix of uses. The proposed development would encourage a maximum of social and community interaction and activity by including a central community space for social gatherings and recreational activity, as well as smaller facilities at the neighborhood level, all connected by pedestrian walkways separate from roads. The location of homes in neighborhood groups,

centered around green areas or recreation areas, would further encourage community interaction, as would the extensive sidewalks and short blocks. The central community space, with a pool, clubhouse, outdoor amphitheater and open play area, is to be located at the high point of the property, clearly visible from Observation Drive. This would establish a distinctive visual character and sense of place for the community. The subject site would not include commercial uses, but it would contribute to the overall balance of employment and residential uses in the planning area. Compatibility with the adjacent industrial park would be ensured by a substantial forested buffer.

Third paragraph: broad range of housing types. This development would include all the types of residences permitted by the PD Zone's Medium Density Category -- multi-family units, townhouses, two-over-two single family units, and a small number of detached, single-family homes. In addition, 12.5 percent would be MPDUs.

Fourth and fifth paragraphs: trees, grading and open space. The proposed development would preserve more than seven acres of existing forest, in a location that would serve as a buffer between the new community and adjacent employment uses. The forest conservation area would also provide a visual amenity for residents, visitors, workers in nearby businesses, and residents of properties to the northeast and east who would also be able to enjoy its visual beauty.

Open space along Observation Drive, and the visibility of the main recreation area, would create a visual openness to the community. The various internal recreation and open space areas are to be distributed throughout the community, putting all residences within easy walking distance of open space and creating extensive physical and aesthetic integration of uses and activities.

Sixth paragraph: pedestrian networks. As Technical Staff concluded, by combining a variety of housing types, streetscapes and street networks that invite pedestrians, a central community facility, small-scale open spaces, and landscaping, the proposed

development would create a physical setting that projects a street-oriented and pedestrian friendly community. This setting, plus the proximity to future transit, would tend to encourage pedestrian activity and reduce reliance on the automobile.

Seventh paragraph: scale. The PD Zone encourages, but does not require, development on a large scale. The subject site has enough space to create a community of 408 units with a variety of housing types, including enough multi-family units for a viable multi-family community. The scale of the development is also large enough to provide both a forested area and meaningful recreation facilities, including two swimming pools, a clubhouse, an outdoor amphitheater and multiple smaller open spaces and play areas.

Eighth paragraph, first part: maximum safety, convenience and amenity. The evidence demonstrates that the proposed development would provide safe and convenient roadways, sidewalks and pathways. The grid street system and homes centered on open space and recreational facilities would create a visual identity for each neighborhood in the community. Internal roads would include private roads, which are designed to slow traffic while still meeting the minimum standards for emergency vehicle access. The extensive, interconnected pedestrian network would ensure safe pedestrian access. The development would provide high levels of convenience and amenity for residents, through all of the features that foster a sense of community and encourage interaction – interconnected streets, interspersed recreation and open space areas, a central community space, intermingled housing types, landscaping and short blocks.

Eighth paragraph, second part: compatibility. The evidence strongly supports the conclusion that the proposed development would be compatible with existing uses in the surrounding area. The 10 to 12 single-family detached homes to the east, between the site and MD 355, would be buffered by the 150-foot right-of-way proposed for Observation Drive, as well as the extensive stream buffer area east of that right-of-way. The right-of-way planned for Observation Drive would be unusually wide for a four-lane road because of the median

necessary to accommodate transit. This width makes for a considerable buffer between uses. At present, the closest home to the subject site is roughly 375 feet away, and the stream buffer area would prevent development of new homes in the area closest to the Observation Drive right-of-way. The only existing residence close to the right-of-way is the King residence, which the Applicant has purchased.

To the south/southwest, the subject site confronts a moving company diagonally, and a school bus depot across from the area proposed for multi-family use. By their nature, neither of these non-residential uses would be adversely affected by the proposed residential community. The residents of the community would be buffered from noise and other effects of the activity level at these two sites by significant setbacks and some landscaping, particularly on the bus depot site. Moreover, the higher intensity of multi-family living would be the most appropriate residential type across from these uses. Both of these properties are recommended in the Master Plan for mixed residential development at densities similar to that proposed here.

Directly south, the subject site confronts the Eastside property, which has an approved preliminary plan of subdivision for a mixed residential community, in the PD-11 Zone, with a density very similar to that proposed here. Technical Staff notes that the three and four-story two-over-two units planned in the southern corner of the subject site would be opposite similar buildings on the Eastside property. See Ex. 64, 6th page. To the north, the site abuts the Gateway Commons property, on which a mixed residential development, also with a density similar to that proposed here, is under construction in the R-200/TDR Zone. As Technical Staff noted, the development proposed in this case would be a logical extension of the planned communities proposed for the adjacent properties to the northeast, south and southwest.⁸ See Ex. 45 at 19.

⁸ The record does not reflect specific development plans for property southwest of the subject site, but testimony and the Staff Report indicate that the Comsat property is recommended in the Master Plan for a very large, mixed-use development, and the bus depot property is recommended for residential density similar to the subject site.

To the west/northwest, the subject site would be buffered from the Gateway Center Drive industrial park, as noted earlier, by a forested area that is about 100 feet wide at its narrowest point. A buffer of that nature makes adverse effects on either use unlikely.

The only unsettled issue that could affect compatibility is building height. Depending on the grading at particular locations, the two-over-two units and multi-family building have potential heights over 60 feet. This could result in a rather imposing multi-family building on Observation Drive, and depending on building heights at the Eastside development, could create a compatibility conflict in the southern corner of the property. The Applicant has committed to maximum building structure heights, however, and it is clear that Technical Staff has every intention of persuading the Applicant to avoid putting the taller structures at locations where the grading will result in unreasonable building heights. Accordingly, the Hearing Examiner is persuaded that this issue does not undermine the overall compatibility of the project, and can be successfully addressed during site plan review.

For all of the reasons stated above, the Hearing Examiner concludes that the proposed rezoning and development would be compatible with existing land uses in the surrounding area.

Ninth paragraph: three findings. The purpose clause states that the PD Zone “is in the nature of a special exception,” and shall be approved or disapproved based on three findings:

- (1) the application is or is not proper for the comprehensive and systematic development of the county;
- (2) the application is or is not capable of accomplishing the purposes of this zone;
and
- (3) the application is or is not in substantial compliance with the duly approved and adopted general plan and master plans.

On the Hearing Examiner’s reading, this element of the purpose clause does not add new requirements, but reminds the District Council of its responsibility to carefully consider whether the PD Zone would be appropriate in the location for which it is requested. The

conclusions drawn earlier in this section govern the findings to be made here. Based on the preponderance of the evidence and for the reasons stated above, the Hearing Examiner concludes that present application is proper for the comprehensive and systematic development of the County; is exceptionally successful in accomplishing all the purposes of the zone; and is in substantial compliance with the Master Plan.

2. Standards and Regulations of the Zone

The standards and regulations of the PD-11 Zone are summarized below, together with the grounds for the Hearing Examiner's conclusion that the proposed development would satisfy these requirements.

Section 59-C-7.121, Master Plan Density. Pursuant to Code §59-C-7.121, "no land can be classified in the planned development zone unless such land is within an area for which there is an existing, duly adopted master plan which shows such land for a density of 2 dwelling units per acre or higher." The subject property is recommended in the Master Plan for residential development at a density of up to 11 units per acre, so this requirement is satisfied.

Section 59-C-7.122, Minimum Area. Code §59-C-7.122 specifies several criteria, any one of which may be satisfied to qualify land for reclassification to the PD Zone. The subject application satisfies the first of these criteria, which states the following:

That it contains sufficient gross area to construct 50 or more dwelling units under the density category to be granted.

The subject property contains sufficient gross area to permit the construction of 408 dwelling units.

Section 59-C-7.131, Residential Uses. Pursuant to Code §59-C-7.131, all types of residential uses are permitted, but parameters are established for the unit mix. A PD-11 development with between 200 and 800 units must have at least 20 percent single-family attached units and at least 35 percent multi-family units, in buildings of four stories or less. No maximum or minimum is prescribed for single-family detached units. The proposed

Development Plan provides for 50 percent single-family attached units and 45 percent multi-family in four-story buildings, satisfying this requirement.

Section 59-C-7.132, Commercial Uses. Commercial uses are permitted but not required under the PD Zone. Parameters established for commercial uses are not applicable to the subject application, which is limited to residential uses. The Applicant considered adding a retail component to the site, drawing on its considerable expertise in running retail shopping centers. The decision ultimately was made that the proposed community itself would be too small to sustain a viable retail presence, and that it would be impractical to expect significant traffic from the future transit stop, because any retail on the subject property would be across the street and up ten to twelve feet – not a convenient location for someone heading to the train. Moreover, there is no guarantee of whether, when and where the transit stop recommended in the Master Plan will be built. For all of these reasons, the Development Plan does not propose any commercial uses.

Section 59-C-7.133, Other Uses. Noncommercial community recreational facilities for the use of residents, such as the swimming pools, open play areas and tot lots shown on the Development Plan, are permitted in the PD Zone. No other non-residential uses are proposed.

Section 59-C-7.14, Density of Residential Development. The Zoning Ordinance provides the following direction for the District Council in considering a request for the PD Zone (§ 59-C-7.14(b)):

The District Council must determine whether the density category applied for is appropriate, taking into consideration and being guided by the general plan, the area master or sector plan, the capital improvements program, the purposes of the planned development zone, the requirement to provide [MPDUs], and such other information as may be relevant.

The Zoning Ordinance classifies the density category applied for, PD-11, as a medium-density planned development zone. It is, moreover, the highest density recommended for the subject site in the Master Plan. As Mr. Perrine suggested, development at the high end of

the recommended density range is appropriate for a site in such close proximity to future transit, and may even be necessary to make transit viable. Based on the Hearing Examiner's experience in other cases, densities considerably in excess of 11 units per acre are often considered appropriate to justify transit. This suggests that anything less than the maximum density recommended in the Master Plan would be inappropriate at this location.

Section 59-C-7.15, Compatibility. This section requires that a proposed development be compatible internally and with adjacent uses. It also establishes minimum parameters for setbacks and building height that are designed to promote compatibility. As discussed in Part V.A.(b)(1) above, the Hearing Examiner finds that the proposed development would be compatible with existing development in the surrounding area. The application also satisfies the specific setback and building height provisions, as detailed below.

Section 59-C-7.15 of the Zoning Ordinance states that where land classified under the PD Zone adjoins land for which the area master plan recommends a one-family detached zone, no building other than a one-family detached residence may be constructed within 100 feet of such adjoining land, and no building may be constructed at a height greater than its distance from such adjoining land. The only adjacent land that is recommended in the Master Plan for a one-family detached density is the area east of the subject site, between the site and MD 355. The townhouses proposed along Observation Drive, on the subject site, would be separated from the adjacent one-family land by the 75-foot dedication the Applicant has offered for Observation Drive, plus a minimum 25-foot building setback from Observation Drive. The multi-family building along Observation Drive would be separated from adjacent one-family land by the 91-foot dedication the Applicant has offered for that part of Observation Drive, plus a minimum 20-foot building setback from Observation Drive. Thus, the 100-foot limitation is satisfied. Moreover, even taking into account the "not to exceed" height for the multi-family building of 64 feet, none of the buildings proposed along Observation Drive would be higher than their respective distances from the adjacent R-200 land.

Section 59-C-7.16, Green Area. The PD-11 Zone requires a minimum of 50 percent green area. The Development Plan depicts green space of 18.8 acres, slightly over 50 percent.

Section 59-C-7.17, Dedication of Land for Public Use. This section requires that land necessary for public streets, parks, schools and other public uses must be dedicated to public use, with such dedications shown on all required development plans and site plans. As noted in Part III.E. above, the Development Plan indicates that dedications will be made for Observation Drive, Shawnee Lane, Street A, Street B and part of Street C. For Observation Drive and Shawnee Lane, however, the Development Plan lacks specific numbers for the right-of-way width. The District Council action recommended at the close of this report requires that these right-of-way widths be added to the Development Plan submitted for certification, if the rezoning is approved, consistent with the evidence of record.

No other dedications are proposed.

Section 59-C-7.18, Parking Facilities. Off-street parking must be provided in accordance with the requirements of Article 59-E of the Zoning Ordinance. As shown on page 30 above, the Development Plan provides for more than the required number of spaces. Technical Staff confirms that the Zoning Ordinance requirement for parking would be met.

The final two elements of finding (b), the maximum safety, convenience and amenity of the residents, and compatibility, have already been addressed.

(c) That the proposed internal vehicular and pedestrian circulation systems and points of external access are safe, adequate, and efficient.

The evidence supports a finding that the proposed internal vehicular and pedestrian circulation systems and points of external access would be safe, adequate, and efficient. The Development Plan proposes an interconnected system of streets and sidewalks that would provide comprehensive, safe access for both vehicles and pedestrians. The site would have the convenience of two access points on Observation Drive and one on Shawnee

Lane, with the Shawnee Lane access located directly across from the access point proposed for the Eastside development, to maximize safety. The private streets within the development would meet Montgomery County Fire and Rescue standards for emergency access.

- (d) That by its design, by minimizing grading and by other means, the proposed development would tend to prevent erosion of the soil and to preserve natural vegetation and other natural features of the site. Any applicable requirements for forest conservation under Chapter 22A and for water resource protection under Chapter 19 also must be satisfied. The district council may require more detailed findings on these matters by the planning board at the time of site plan approval as provided in division 59-D-3.**

The proposed development would preserve 20 percent of the forest that currently covers the site. Preserving more of the existing forest likely would be inconsistent with development of the site at the density recommended in the Master Plan. The evidence establishes that forest conservation requirements under Chapter 22A would be satisfied. The Preliminary Water Quality Plan, which has been approved by the Planning Board and conditionally approved by DPS, provides for comprehensive, environmentally sensitive stormwater management that would prevent erosion, and can be expected to satisfy the requirements of Chapter 19.

- (e) That any documents showing the ownership and method of assuring perpetual maintenance of any areas intended to be used for recreational or other common or quasi-public purposes are adequate and sufficient.**

The Applicant has not provided any draft documents of this nature. However, the Applicant's hearing representative, Mr. Pollin, testified that if this development goes forward, a homeowner's association will be created to govern and maintain the common areas and recreational facilities. See Tr. at 161.

B. Public Interest

The applicant must show that the proposed reclassification bears sufficient relationship to the public interest to justify its approval. The State Zoning Enabling Act applicable to Montgomery County requires that all zoning power must be exercised:

“ . . . with the purposes of guiding and accomplishing a coordinated, comprehensive, adjusted, and systematic development of the regional district, . . . and [for] the protection and promotion of the health, safety, morals, comfort, and welfare of the inhabitants of the regional district.”
[*Regional District Act*, Maryland-National Capital Park and Planning Commission Article (Art. 28), Md. Code Ann., § 7-110].

When evaluating the public interest, the District Council normally considers master plan conformity, the recommendations of the Planning Board and Technical Staff, and any adverse impact on public facilities or the environment.

The Planning Board and Technical Staff concluded that the proposed development would substantially comply with the recommendations and objectives of the *Clarksburg Master Plan*, and for the reasons stated in Part V.A. above, the Hearing Examiner agrees.

The evidence of record indicates that the proposed development would have no adverse effects on traffic conditions, in light of the Applicant's commitment to participate financially in necessary improvements to the intersection of Stringtown Road Extended and Gateway Center Drive. The evidence indicates that public water and sewer are available for extension to the subject site, and that forest conservation and stormwater management regulations would be satisfied. With regard to public schools, the evidence suggests that in light of the intensive school-building activity under way in Clarksburg, capacity in the relevant schools would be adequate to accommodate the proposed development under both the Growth Policy definition and the MCPS definition.

The ability of the proposed development to serve the public interest should also be considered in light of the Applicant's actions in purchasing the Cawood Property and agreeing to hold it in reservation for five years from the date of preliminary plan approval, to make it available to the County or other government agencies for potential transit parking. Moreover, the proposed development would increase the availability and variety of housing in an area in which employment

uses currently predominate. In addition, the Applicant has committed not only to construct two lanes of Observation Drive in accordance with the Master Plan-recommended alignment, but to provide 16 additional feet of right-of-way beyond the Master Plan recommendation, to ensure adequate space for a transit stop.

Having carefully weighed the totality of the evidence, the Hearing Examiner concludes that approval of the requested zoning reclassification would be in the public interest.

VI. CONCLUSIONS

Based on the foregoing analysis and after a thorough review of the entire record, I reach the conclusions specified below.

A. Development Plan

1. The submitted Development Plan is in substantial compliance with the Master Plan.
2. The Development Plan complies with the purposes, standards, and regulations of the PD-11 Zone and provides for a form of development that will be compatible with adjacent development.
3. The Development Plan proposes internal vehicular and pedestrian circulation systems and points of external access that will be safe, adequate and efficient.
4. By its design, and through the implementation of a comprehensive water quality plan, the proposed development will tend to prevent erosion of the soil and preserve natural vegetation and other natural features of the site. The application will comply with forest conservation requirements under Chapter 22A and requirements for water resource protection under Chapter 19.
5. No documents have been submitted to show the ownership and method of perpetual maintenance of areas intended to be used for recreational or other common or quasi-public purposes, but the binding testimony of the Applicant's representative establishes that if the project goes forward, a homeowner's association will be responsible for perpetual maintenance of recreational facilities and other common areas.

B. Zoning Request

Application of the PD-11 Zone at the proposed location is proper for the comprehensive and systematic development of the County because the proposed development, as shown on the submitted Development Plan:

1. Will serve the public interest;
2. Will be in substantial compliance with the applicable master plan; and
3. Will fully satisfy the purposes, standards and regulations of the zone.

VII. RECOMMENDATION

I, therefore, recommend that Zoning Application No. G-832, requesting reclassification from the R-200 Zone (Residential, one-family, half-acre minimum lot size) to the PD-11 Zone (Planned Development, maximum 11 units per acre) of 37 acres of land located on the north side of Shawnee Lane in Clarksburg, identified as Lots 27 and 28 of the Garnkirk Farms Subdivision, in the 2d Election District, be **approved** in the amount requested, subject to the specifications and requirements of the final Development Plan, Exs. 65(a) and (b); provided that the Applicant submits to the Hearing Examiner for certification a reproducible original and three copies of each of the two sheets of the Development Plan approved by the District Council, Exhibits 65(a) and (b), with the right-of-way dedication widths proposed for Observation Drive and Shawnee Lane properly noted, within 10 days of approval, in accordance with § 59-D-1.64 of the Zoning Ordinance.

Dated: October 20, 2006

Respectfully submitted,

Françoise M. Carrier
Hearing Examiner